

DOT Red Tape Review Administrative Code Changes

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TRANS 28
"Harbor Assistance Program"

Proposed Changes:

1) Recommendation: Capitalize U.S. Army Corps of Engineers:

RATIONALE: The U.S. Army Corps of Engineers is a proper noun but is not capitalized in this chapter.

Trans 28.04(2)

(2) LOCATION. Eligible projects shall be located only in Great Lakes or Mississippi River system harbors where vessels take on or discharge a combined total of more than 1,000 tons of commercial cargo per year; where commercial, naval or recreational vessels are built; where passenger or vehicle-carrying ferry service connects the Wisconsin communities along the Great Lakes and Mississippi River, or connects the Wisconsin mainland with other states, Canadian provinces or populated islands in Wisconsin or where commercial fishing vessels unload fish. The U.S. ~~army corps of engineers'~~ Army Corps of Engineers' annual tonnage figures shall be the basis for the tonnage determination; where tonnage figures are not available, the eligible applicant shall provide tonnage figures based on auditable records.

Trans 28.07(2)

(2) For projects funded in part by the U.S. ~~army corps of engineers~~ Army Corps of Engineers, the state share may not exceed 50% of the non-federal share of the project costs.

Trans 28.07(3)

(3) For projects with federal funding, other than those projects funded in part by the U.S. ~~army corps of engineers~~ Army Corps of Engineers as described in sub. (2), the state share may not exceed 80% of the non-federal share of project costs; furthermore, the minimum eligible applicant share shall be no less than 10% of project costs.

2) Recommendation: allow electronic mail to be used for certain notices:

RATIONALE: The addition of electronic mail to Trans 28.06(1) will allow for cheaper and more modern means of notification.

Trans 28.06(1)

(1) The department shall annually establish deadlines for filing harbor assistance project applications and shall give appropriate notice of the deadlines. Notice shall be by regular or electronic mail, sent to every eligible applicant that has met

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the planning requirements under s. Trans 28.10. The department shall issue notice of the grant awards within 180 days after an application deadline. No grant funds may be committed to an eligible applicant until a grant agreement is negotiated and signed by the department and the eligible applicant.

- 3) **Recommendation:** extend annual application deadline from February 1 to August 1:

RATIONALE: Under TRANS 28.09(4), a possible change would be to eliminate either the February 1 or the August 1 grant cycle and divide available funds evenly between the two years of the biennial budget. It is more efficient to have one grant cycle per year instead of two for administration purposes. Further, demand exceeds available funds almost every grant cycle for the last four years and applicants sometimes apply in two or three cycles for the same project. Emergency projects already can apply outside the normal grant cycle, and would not be harmed by this change.

Trans 28.09(4)

(4) The eligible applicant shall submit an application to the department by August 1 in order to receive primary consideration for funding during the following calendar year. If funds are available, applications may be submitted by March 15, 1985, and by ~~February 1~~ August 1 of each year thereafter, for funding in the same calendar year. The department may waive the requirements in this subsection for emergency repair projects.

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TRANS 31
"Rail Passenger Excursions on State-Owned Rail Lines"

Proposed Changes:

- 1) **Recommendation:** Update the term for the administrative unit with WisDOT responsible for administering this chapter from the 'Bureau of Rails and Harbors' to the 'Rails and Harbors Section'.

RATIONALE: This changes reflects the accurate description of the section (from being a bureau years ago) within the department and will also require changing the BH&R to RHS in following code sections: Trans 31.03(1) Note, 31.03(5)(a)- (d), 31.03(6)(a)- (c), 31.03(8), 31.04(1)(h)(2).

Renumber Trans 31.02(2) to Trans 31.02(15m) and amend to read:

(2m) "BH&R RHS" means the ~~bureau of railroads and harbors~~ section within the department.

Trans 31.03(1) Note:

Note: Applications may be submitted to BR&H RHS, 4802 Sheboygan Avenue, P. O. Box 7914, Madison, Wisconsin 53707-7914.

Trans 31.03(5)(a)

Trans 31.03(5)(a) BR&H RHS shall review an application and notify the applicant of approval or denial of the application within 21 days following receipt of a complete application.

Trans 31.03(5)(c)

(c) BR&H RHS may require additional information from an applicant to complete its review of an application. If an application is received at least 45 days prior to the date of the first planned operation, BR&H RHS shall have 21 days from the receipt of the additional information to render its decision about the application.

Trans 31.03(5)(d)

(d) BR&H RHS shall notify an applicant in writing of all deficiencies in an application, and the reasons for a denial.

Trans 31.03(6)(a)

- (a) An application which has been denied by BR&H RHS in accordance with sub. (5)
(b) 1. may be resubmitted in compliance with this section.

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Trans 31.03(6)(b)

(b) An application which has been denied by BR&H RHS in accordance with sub. (5) (b) 2. or 3. may be resubmitted with the additional information identified in BR&H's RHS's letter denying the original application.

Trans 31.03(6)(c)

(c) An application which has been denied by BR&H RHS in accordance with sub. (5) (b) 4. or 5. may not be resubmitted until after the sanctions imposed by s. Trans 31.07 (3) have expired.

Trans 31.03(8)

(8) **DURATION.** Any permit issued by the department shall expire on the date specified by BR&H RHS. In no event shall a permit expire later than December 31 of the year in which the application proposes operation to commence.

Trans 31.04(1)(h)2.

2. All active grade-crossing warning devices are functional and can be operated by the equipment proposed to be used unless BR&H RHS waives this requirement in writing on the permit.

- 2) **Recommendation:** repeal and recreate Trans 31.04(k)1., 2. and 3. and recreate Trans 31.04(k)1. and 2. as follows:

Trans 31.04(k)1. Maintaining an established escrow account approved by the Department with a Wisconsin financial institution for the deposit of all amounts received from buyers in advance ticket sales.

2. A financial instrument from a Wisconsin financial institution in an amount sufficient to refund the expected advance payments for service and Department administrative costs of processing refunds in the event that the excursion is not operated for any reason, including a bond, a certificate of deposit, or an irrevocable letter of credit. The commitment described in this subdivision shall be established in favor of or made payable to the state, for the benefit of any buyer who does not receive a refund if performance of the event for which such ticket has been purchased has been cancelled or rescheduled. Applicant shall file with the department any agreement, instrument or other document necessary to enforce the commitment against Sponsor or any relevant 3rd party, or both.

RATIONALE: Current regulations at TRANS 31.04(1)(k) require rail passenger carriers to provide evidence that they can refund advance ticket sales by: 1) maintaining a qualified escrow fund for all advanced ticket sales; 2) maintaining a

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qualified financial instrument sufficient to refund the expected advance payments for service in the event the excursion is not operated; or 3) municipal acceptance of the obligation to make any required refunds. This section should be updated to reduce the requirement for a sizeable escrow account. Excursion sponsors are no longer using advanced payments of cash that can easily be escrowed to protect buyers against cancelation of trips. Today these excursions are nearly exclusively booked by placing credit card holds as a reservation then charges are posted the day of the trip. If trips are canceled the seller can easily release credit card holds. Trip purchasers have additional protection in that they can refuse charges that were made if a cancelation refund is not offered by the seller for trips that do not occur.

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TRANS 55
"Conditions of State Aid for Airport Improvement"

Proposed Changes:

1) Recommendation: Create Trans 55.02(2m):

55.02(2m) "Approach" means areas beyond the runway end intended to provide safe navigable airspace for aircraft arrivals and departures to and from a landing facility.

RATIONALE: Runway approaches are a key component of airport infrastructure. The rule is proposed to be updated to add a definition to the code for runway "approaches". Current regulations require an airport owner to adequately clear and protect the aerial approaches to the airport by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards. This proposal clarifies that duty by defining the 'approach' area.

2) Recommendation: Amend Trans 55.06(3)(a)

55.06(3)(a) An airport owner shall maintain clear and safe runway protection zones as described in FAA advisory circular 150/5300-13, Airport Design, as amended, except for runway lighting fixtures, markers and metrological instruments whose locations are fixed by their functional purposes or a structure approved by the FAA. The owner shall establish positive control of the runway protection zones through the acquisition of fee title or avigation easement. The owner shall prevent the erection or creation of a structure or place of public assembly in the runway protection zone.

RATIONALE: In addition, the rule is updated to more generally describe a variety of easements in 55.06(3)(a).

3) Recommendation: Amend Trans 55.06(4)(a):

55.06(4) (a) A public airport owner shall adopt the following ordinances within 6 months after receipt of a sample ordinance receiving notice from the secretary:

RATIONALE: Current regulations require the Secretary of Transportation to provide a sample ordinance as condition of an airport owner's duty to enact an ordinance. This proposal requires instead that the Secretary simply notify the airport owner than an ordinance is required.

4) Recommendation: Amend Trans 55.06(8)(c):

55.06(8)(c) The airport layout plan and each amendment, revision or modification to the plan shall be subject to the approval of the secretary, which approval shall be evidenced by the signature of a duly authorized representative of the secretary on the face of the

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airport plan. The airport owner may not make or permit a change or alteration in the airport or in any of its facilities other than in conformity with the airport layout plan as approved by the secretary if the changes or alterations might adversely affect the safety, utility or efficiency of the airport.

RATIONALE: Trans 55.06(8)(c) specifies that the Airport Layout Plan approval must be shown by signature on the face of the document. In the relatively near future, these may be done electronically. Thus, there will be no "face of the document". So we recommend rewording the language to address approval but not be specific about the method and location of the approval. Delete the requirement that approval of a plan, revision or modification be done on the face of the plan.

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TRANS 56
"Erection of High Structures"

Proposed Changes:

1) Recommendation: Repeal Trans 56.04(3)(b)4. and recreate to read:

4. Provide latitude and longitude coordinates of the proposed structure.

RATIONALE: Trans 56.04(3)(b)4. lists the necessary components of the permit application, and one of those items is the need to depict the location on a quad map or 1/4 map. There are other means today that will suffice or be even more accurate in order for us to clearly identify the location. We wish to make the specific method listed in the code more generic.

The current language reads:

Trans 56.04(3)(b)4. Location of the proposed structure depicted on a United States coast and geodetic survey 7.5 or 15 quadrangle map, or acceptable copy, and by the quarter quarter section of the United States survey.

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TRANS 57
"Standards for Airport Siting"

Proposed Changes:

1) Recommendation: Amend Trans 57.04(1)(b)

RATIONALE: Trans 57.04(1)(b) lists FAA document references. These references have changed. We recommend updating the language to be more generic and refer to the current FAA standard for marking and lighting of runways.

Trans 57.04(1)(b) A displaced threshold shall be marked similar to attached diagram B for runways with other than paved surfaces. Runways with paved surfaces shall be marked in accordance with the latest FAA advisory circular 150/5340-1G, "Standards for Airport Markings," September 27, 1993 marking standards. In addition, if the runway is lighted, ~~the displaced threshold it~~ shall be lighted in accordance with the latest FAA advisory circular 150/5340-24, "Runway and Taxiway Edge Lighting System," September 3, 1975. It applies to low intensity runway lighting systems and medium intensity systems.

2) Recommendation: Correct a typographical error to properly identify the instrument flight rules.

RATIONALE: In Trans 57.05(f), there is a typo. The letter "I" is missing in IFR.

Trans 57.05(2)(f) ~~FR~~ IFR and VFR traffic considerations. A certificate of site approval may be denied if the proposed site underlies the airspace in the primary approach area for an instrument approach, and the traffic pattern altitude conflicts with published altitudes for the approach.

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Division of Motor Vehicles (DMV)

TRANS 100
"Accident Reporting and Safety Responsibility"

This rule provides interpretation and procedures for the SR-22 program, Damage Judgments, and accident reporting.

In the past, upon receiving notice of a crash that may have involved an uninsured party, DMV would send evaluation documents to each individual. Those documents could be used if an individual wanted to pursue action against an involved uninsured party.

The Wisconsin driver record reflects involvement in an accident, the specific date, the severity, and the county of occurrence; it does not show the varying degrees of fault for those involved. Because of this, and incomplete or incorrect data from crash reports, unnecessary documents were being sent to individuals who did not need or want them.

These mailings were sent without any official actions having been taken by insurance companies or law enforcement, and should not be confused with the mailings used in conjunction with cases where official action has been taken (such as Safety Responsibility hearings or Damage Judgment claims).

These evaluation documents are available on the DMV web site, and the changes listed still allow DMV to provide the forms to individuals who request them by other means.

Proposed Changes:

- 1) Amend Trans 100.01(2)(Note) to clarify the vehicles subject to accident reporting:

Trans 100.01 Note: For purposes of accident reporting, at least one car, truck, bus, or motorcycle must be in transport for the department to consider the accident reportable. For information on occupational licenses, see s. Trans 117.03 (2) (k). Forms used in this chapter are MV 3038 resolution authorizing power of attorney under ch. 344, Stats., MV 3039 minors release, MV 3041 release of liability, MV 3044 evaluation of property damage, MV 3045 evaluation of personal injuries, MV 3046 evaluation of motor vehicle damage, MV 3069 application for self-insurance, MV 3070 safety responsibility self-insurance certificate, MV 3100 notice of incomplete report, MV 3128 installment agreement to pay damages, MV 3343 compliance notification, MV 3347 emergency vehicle involvement, MV 3384 safety responsibility information, MV 3385 informational letter to injured party, and MV 3387 reinstatement instructions, MV 4000 Wisconsin motor vehicle accident report. Forms may be obtained, free of charge, from Wisconsin Department of Transportation, Traffic Accident Section, P.O. Box 7919, Madison, WI 53707-7919.

- 2) Amend Trans 100.03(3) to correct a typographical error pertaining to the existing cross reference to s. 343.12, Stats. At the end of the first sentence of sub. (3), delete "343.12" and substitute "344.12".
- 3) 100.07(1) has a note that should be deleted. It contains outdated information regarding acquisition of paper forms.
- 4) 100.07(2)(a) will be changed as DMV no longer mails out evaluations for every uninsured accident, but reserves the right to do so. "If the department determines that one or more people involved in an accident were uninsured, the department may mail evaluation reports to all other persons involved in the accident. The date on which the department first mails evaluation reports to any person shall be

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considered the "mailing date" under this subsection. The department shall mail the evaluation reports to the address provided in the accident report."

- 5) 100.07(2)(b)1. should be repealed.
- 6) 100.07(2)(b)2. Should be amended to read "The department ~~may~~ shall consider an evaluation report filed with the department ~~more than 24 days after the mailing date~~ if it meets all of the following requirements:" This will match the rule up with current processes.
- 7) 100.07(5) needs to have the "90 days of receiving an accident report" and "or at such later date" struck and replaced with "one year of the accident date."
- 8) 100.07(6)(b)2. should be repealed.
- 9) 100.07(6)(b)5. would need to be created to say "5. The uninsured has complied with neither Trans 100.12 nor 100.13."
- 10) 100.08(7)(b) should read as "More than one year after the date of deposit or date of suspension, whichever is ~~later~~ earlier, has passed.." to keep in line with 344.20(3)(b).
- 11) 100.10(7) Due to a drop in volume, and to improve customer convenience, DMV now should be able to perform these hearings by phone. (7) should be changed to allow for additional routes of communication as follows: "Hearings shall be informal. Hearsay and documentary evidence may be received by the hearing examiner and relied upon as the basis for a decision. ~~Telephone testimony~~ of persons involved in the accident may be permitted by telephone, electronic submission of documents and other remote communication methods ~~may not be permitted.~~"
- 12) 100.18(1)(e) needs the "20 years" changed to "5 years" to match statute changes.

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TRANS 106

"Certification of Traffic Safety Programs and Instructors"

- Provides DMV with rules and procedures on how to implement Traffic safety program, certify instructors, and process of recertification of instructors after denial, cancellation or expiration.

Proposed Changes:

1) Current Rule: Trans 106.02 Definitions.

(4) "Designated traffic safety school coordinator" means an individual appointed by the Wisconsin technical college district or assessment agency, for the Sauk and Dodge county programs, to oversee the traffic safety school program.

Proposed Change: Delete sub. (4).

BACKGROUND

DMV does not have this type of traffic safety school coordinators any longer.

- 2) Current Rule:** Trans 106.02(11) defines "Satisfactory driving record" as "not contain[ing] a conviction for OWI or any OWI-related charge." Later in 106.06(1)(b)1., under "certification standards" it states "An applicant may not be certified...until one year from the date of an OWI conviction." This implies that a satisfactory driving record can contain an OWI violation as long as it is older than one year.

Proposed Change: Change sub. (11) to end with "...or any OWI-related charge within one year."

BACKGROUND

This change will allow individuals who have had an OWI more than one year ago to qualify as instructors, while still forcing an instructor who has been convicted of OWI to not teach for one year. Some who have been convicted of OWI in the past are motivated to teach these courses specifically because of their prior experiences, and DMV would not want to prevent them from applying.

- 3) Current Rule:** Trans 106.02(12) defines "School" but refers to programs incorrectly.

Proposed Change: Subs. (4), (5), (6), and (7)" should be changed to "(5), (6), and (8)" to correctly reference the programs.

BACKGROUND

This inaccuracy seems to have happened in 1996.

- 4) Current Rule:** Trans 106.03(3) A group dynamics traffic safety program shall meet the following conditions:

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TRANS 106

“Certification of Traffic Safety Programs and Instructors”

(a) Only one group dynamics traffic safety school program may be certified in each WTC district unless the department determines that there is a need for additional programs in a district.

Proposed Change: Trans 106.03(3)(a) should read: “Only one group dynamics traffic safety school program may be certified in each WTC district unless the department determines that there is a need for additional programs in a district or unless it is an accredited institution of higher education operated by a federally recognized American Indian tribe or band in this state.”

BACKGROUND

This change brings par. (a) in line with the treatment of s. 345.60(1) by 2013 Wisconsin Act 246.

5) Current Rule: Trans 106.03(4) A multiple offender traffic safety program shall meet the following conditions:

(a) Only one multiple offender traffic safety school program may be certified in each WTC district unless the department determines that there is a need for additional programs in a district.

Proposed Change: Trans 106.03(4)(a) should read: “Only one multiple offender traffic safety school program may be certified in each WTC district unless the department determines that there is a need for additional programs in a district or unless it is an accredited institution of higher education operated by a federally recognized American Indian tribe or band in this state.”

BACKGROUND

This change brings par. (a) in line with the treatment of s. 345.60(1) by 2013 Wisconsin Act 246.

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TRANS 113

"Administrative Suspension of Operating Privilege for Operating a Motor Vehicle with a Prohibited Alcohol Concentration"

These changes are intended to conform Trans 113 to 2003 Wisconsin Act 97. This request includes 'detectable presence of a restricted controlled substance' in the treatment of the administrative suspension process under ch. Trans 113.

Proposed Changes:

- 1) Amend the chapter title to read:
(title) Administrative Suspension of Operating Privilege for Operating a Motor Vehicle with a Prohibited Alcohol Concentration or a Detectable Amount of a Restricted Controlled Substance

- 2) Trans 113.01 should read as follows:
Purpose and scope. As authorized by s. 85.16 (1), Stats., the purpose of this chapter is to establish the department's administrative interpretation of s. 343.305 (7) and (8), Stats., relating to arrest for operating with a prohibited alcohol concentration or a detectable amount of a restricted controlled substance, administrative suspension of operating privilege and reviews therefor. Section 343.305(7)(a), stats., authorizes DMV to administratively suspend the driver's license of an individual whose test results indicate the presence of a detectable amount of a restricted controlled substance in the person's blood or a prohibited alcohol concentration.

- 3) Trans 113.03 should read as follows: "If a person is tested for alcohol concentration or a detectable amount of a restricted controlled substance in accordance with..."

- 4) Trans 113.03(1) should be removed as, per 2009 Act 103, law enforcement is not to confiscate licenses any longer.

- 5) Trans 113.04(3)(c) should be amended as follows:

113.04(3) (c) Whether the person had a prohibited alcohol concentration or a detectable amount of a restricted controlled substance at the time the offense allegedly occurred.

- 6) Trans 113.04(3)(e) should be amended as follows:

113.04(3) (e) If one or more tests were administered in accordance with s. 343.305, Stats., whether each of the test results for those tests indicate the person had a prohibited alcohol concentration or a detectable amount of a restricted controlled substance.

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TRANS 113

"Administrative Suspension of Operating Privilege for Operating a Motor Vehicle with a Prohibited Alcohol Concentration"

7) Trans 113.04(8) should be amended as follows:

113.04 (8) If at any time the person submits written evidence from a facility certified by the state laboratory of hygiene and meeting the requirements of s. 885.235 (1), Stats., indicating the person did not have a prohibited alcohol concentration or a detectable amount of a restricted controlled substance, the suspension will be vacated.

8) Trans 113.04(9) should be amended as follows:

113.04 (9) If the examiner finds to a reasonable certainty by evidence that is clear, satisfactory and convincing that the criteria in s. 343.305 (8) (b), Stats., for administrative suspension have not been satisfied, or that the person did not have a prohibited alcohol concentration or a detectable amount of a restricted controlled substance at the time the offense allegedly occurred:

9) Trans 113.04(10) should be amended as follows:

113.04 (10) If the examiner finds to a reasonable certainty by evidence that is clear, satisfactory and convincing that the criteria for administrative suspension have been satisfied and that the person had a prohibited alcohol concentration or a detectable amount of a restricted controlled substance at the time the offense allegedly occurred:

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TRANS 118
"Employer Notification Program"

Chapter Trans 118 has been effectively unchanged since the 1990s and needs to be updated to match what the Employer Notification program has become. The title of the program has been changed, the fees have been greatly reduced, and the use of physical paper has been all but eliminated (short of the original application for the program).

Proposed Changes:

- 1) In addition to the changes listed below, all instances of the word "employee" should be corrected to read "employeee."
- 2) Trans 118.01 The note needs to be truncated from "Forms used in this chapter..." though "WI 53707." These forms are no longer in use.
Trans 118.01 Note
Note: Authority for this chapter can be found at s. 343.247 (2), Stats. ~~Forms used in this chapter are MV3555 Employer Notification Customer Agreement and MV3556 Employee Enrollment Request. These forms are available from the Wisconsin Department of Transportation, Bureau of Driver Services, P.O. Box 7917, Madison, WI 53707.~~
- 3) Trans 118.03 should be changed as follows:
Employer Notification application requirements. Employer notification is obtained through the system used to access the public abstract of the driver's driving record maintained under s. 343.23, stats. An application for the public abstract request system employer notification program shall be made to the department upon forms prescribed by the department, shall be accompanied by the required fees as set forth in s. Trans 118.08 and shall include such information as the department reasonably requires. The Department may assign these duties to a third party designee.
- 4) Trans 118.04 should be changed as follows:
Trans 118.04 -Employer account codes Customer Account Numbers.
(1) ISSUANCE. The department shall issue a employer account code customer account number upon receipt of a properly completed employer notification customer agreement form data access agreement form and other information as the department reasonably requires.
(2) USAGE. The department may require that the employer use the employer account code customer account number for purposes of identification and payment procedures.
History: Cr. Register, December, 1990, No. 420, eff. 1-1-91.
- 5) Trans 118.05 should be changed as follows:
Trans 118.05 Employer notification customer agreement form Electronic DMV Records Service Data Access Agreement The employer shall submit an employer notification

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TRANS 118
"Employer Notification Program"

~~customer agreement form~~ a data access agreement and other information as the department reasonably requires under any of the following situations:

- ~~(1) When the employer is submitting an original application for enrollment in the employer notification program~~ public abstract request system.
- ~~(2) When the employer is requesting that an additional account code be issued to the same employer name or to another account under the same employer name.~~
- ~~(3) When the employer changes its agency name or address, or both.~~
- ~~(4) When the employer requests a renewal of registration for the employer notification procedure~~ public abstract request system.

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91.

- 6) Trans 118.06 should be changed as follows:

Trans 118.06 Employee enrollment.

~~(1) EMPLOYEE ENROLLMENT. An employer may enroll an employe~~ employee in the employer notification program by entering ~~submitting a written request to the department~~ the employee online through the public abstract request system.

~~(2) CONTENT. The written request shall contain the following information:~~

- ~~(a) The employer's name and address.~~
- ~~(b) The employer's account code.~~
- ~~(c) The employe's driver license number.~~
- ~~(d) The employe's name as it appears on the employe's driver license.~~
- ~~(e) The employe's date of birth.~~
- ~~(f) The employe's social security number.~~
- ~~(g) Such other information as the department may require.~~

Note: ~~The department will make Employee Enrollment Request Forms (MV3556) available to the public for the purpose of enrolling employes in this program. For information on obtaining forms, see s. Trans. 118.01 note.~~

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91.

- 7) Trans 118.07 Should be changed as follows:

Trans 118.07 Withdrawal of employes and employers.

~~(1) EMPLOYEE WITHDRAWAL. An employer may withdraw an employe, and shall withdraw a former employe,~~ from the employer notification program ~~submitting a written request to the department. The written request shall contain the information set forth in s. Trans 118.06 (2) (a) to (f) by~~ removing the employee from their public abstract request system online roster.

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TRANS 118
"Employer Notification Program"

(2) EMPLOYER WITHDRAWAL. An employer may withdraw from the employer notification program by submitting a written request to the department. The request shall include the employer's name, account code, and any other information the department reasonably requires.

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91.

8) Trans 118.08 should be changed as follows:

Trans 118.08 Procedure and fees.

(1) EMPLOYER INITIAL ENROLLMENT. The department shall register an employer in the employer notification program upon receipt of a properly completed employer notification customer data access agreement form together with the proper fee. The registration of an employer in the public abstract request system employer notification program shall be issued for the calendar year and is valid only during the calendar year for which issued. For each account code issued to an employer, the fee shall be \$20 for an application submitted before July 1 of a year and \$10 for an application submitted on or after July 1 remain in effect for a period of four years unless terminated early by the Department or the employer.

(2) RENEWAL. At least 30 60 days prior to the expiration of an employer notification customer a data access agreement form, the department shall mail to the last known address of notify the employer a notice of the date upon which the employer's registration fee must be paid and the new employer notification customer agreement form data access agreement must be returned. An employer who does not return the renewal form and fee by the date provided in the notice may be removed from the program. The renewal fee for the employer notification program is \$20 per account code assigned to the employer.

~~(3) EMPLOYEE REGISTRATION. An application to register an employee in the employer notification program shall be made to the department in writing and shall be accompanied by the required fee of \$2.00 per employee enrolled.~~

~~(4) EMPLOYEE WITHDRAWAL. An application to withdraw an employee from the employer notification program shall be made to the department in writing.~~

~~Note: The fee for notification documents shall be \$3.00 as established by s. 343.247 (2) (b), Stats.~~

~~(5) ANNUAL REVIEWS. Annual reviews of the fees established under this section will commence on April 1, 1993, and if the fees need to be raised so as to make the employer notification program self supporting, the fees shall be changed effective 90 days after the annual review date.~~

~~(6) FEES. The department shall establish the rate of payment for the employer notification program based on all of the following factors:~~

~~(a) The estimated annual volume of employer applications.~~

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"Employer Notification Program"

- ~~(b) The estimated annual volume of employer-generated registrations of employees.~~
- ~~(c) The estimated annual volume of employer-generated withdrawal orders of employees.~~
- ~~(d) The estimated costs of operation, including employee salaries and fringe benefits, office space, office supplies and equipment, postage, computer charges, forms and other necessary expenses.~~
- ~~(e) Such other matters which the department determines have a fiscal impact on the program.~~

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91.

- 9) Trans 118.09 should be changed as follows:

Trans 118.09 Invoices Payment.

~~(1) SCHEDULE. The department shall mail an invoice to any employer that owes employer notification fees assessed under this chapter at least once per calendar year. Employers shall make payments at the time of requesting information, through means determined by the Department~~

~~(2) BILLING PERIOD. Invoices will bill an employer for each notification document produced between the date of the previous invoice and the date of the current invoice.~~

~~(3) CONTENT OF INVOICE. Each invoice shall include:~~

~~(a) The name and address of the employer.~~

~~(b) The department invoice date.~~

~~(c) The quantity of notification documents mailed to the employer for which fees are owed.~~

~~(d) The employer account code.~~

~~(e) The total amount payable to the department.~~

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91; am. (1) and (2), Register, June, 1993, No. 450, eff. 7-1-93.

Trans 118.10 Failure to comply with terms of program. The department may ~~not~~ provide employer notification documents to an employer suspend or terminate access to employer notification if the employer has failed to comply with any of the provisions of this chapter including, but not limited to, paying any invoice or a fee when due.

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91.

- 10) Trans 118.11 should be repealed.

- 11) Trans 118.12 should be changed as follows:

Trans 118.12 The employer notification document.

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(1) ~~CONTENT.~~ The employer notification document will contain all of the following information: be provided with an electronic copy of the employee's current driving record.

~~(a) The employee's driver license number.~~

~~(b) The employee's driver license type and expiration date.~~

~~(c) The employee's date of birth.~~

~~(d) The employer's name and account code.~~

~~(e) The employee's name and address.~~

~~(f) The employee's driver record information, excluding confidential data, maintained on the department's computer.~~

(2) ~~SOURCE.~~ The source of the information supplied to the employer on the notification document shall be limited to the data retained and available in the department's computer database for holders of Wisconsin driver's licenses or identification cards.

(3) ~~WHEN ISSUED~~NOTIFIED. Employer Electronic notification documents will be issued provided when there is any change activity, according to Trans 118.01, in the driver record maintained by the department for an enrolled driver employee.

Note: No notification will be provided upon initial enrollment. Employers may obtain driver abstracts when hiring employees under ch. Trans 195.

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91.

12) Trans 118.14 should be changed as follows:

Trans 118.14 Construction of this rule. Nothing in this chapter shall be construed to relieve the applicant for an employer notification document a driver record from submitting a complete application with the fees, and payment of appropriate fees, described in this chapter. In the event of a conflict between the provisions of ch. Trans 195 and the provisions of this chapter, the provisions of this chapter shall control.

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91.

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TRANS 130
"Special Identification Cards and Special Registration Plates for Physically Disabled"

- *Relating to the issuance and use of special identification cards and special registration plates for persons with a physical disability and for persons and any organizations that regularly transport persons with a physical disability.*

Proposed Changes:

- 1) Current Rule:** Trans 130.03 Application form. (1) APPLICATION BY A PERSON FOR AN INDIVIDUAL CARD AND APPLICATION FOR SPECIAL REGISTRATION PLATES. Each application by a person for a permanent individual or temporary individual card and each application for special registration plates shall be on a form provided by the department or in a letter, except as allowed in s. Trans 130.10, and shall contain the following information:
- (g) The signature of the person or, if applicable, the signature of anyone authorized to sign for the applicant.

Proposed Change: Amend 130.03(g) to require either the signature or electronic signature as defined in s. 137.11(8), Stats. Furthermore specify that the health care specialist would be considered an authorized individual to sign on behalf of the applicant.

How it relates to efficiency: We would like the ability to accept an electronic version of signatures and allow health care specialists to be considered an authorized individual to sign on behalf of the applicant to allow the processing of these disabled permits through an online system. This would streamline the procedure for customers and bypass manual processing through the DMV.

BACKGROUND

This proposal will allow physicians to apply for Disabled Identification cards on behalf of their patients using DMV's online system. This change will result in administrative efficiencies for DMV and faster turnaround time for customers.

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TRANS 131

"Motor Vehicle Inspection and Maintenance Program (MVIP)"

- *This chapter applies to all nonexempt vehicles customarily kept in those counties certified by the department of natural resources as failing to meet federal primary or secondary ambient air quality standards.*

BACKGROUND

These proposed changes are mainly the result of 2009 Wisconsin Act 228 that made substantial changes to the Wisconsin Vehicle Inspection Program, moving from a centralized inspection program with 9 locations to a decentralized program with 200 private inspection facilities (PIFs) throughout the seven county vehicle emissions program area.

Proposed Changes:

1) Current Rule: Trans 131.01(2) Note:

Note: Forms used in this chapter are MV 2016, substitute renewal notice; MV2470, vehicle inspection report; MV 2472, application for letter of temporary exemption from emission test requirements; MV 2588, exchanged engine certificate; MV 2594, quality assurance inspection report. Copies can be obtained from the Wisconsin Department of Transportation, Dealer and Agent Section, P. O. Box 7909, Madison, WI 53707-7909.

Proposed Change: Form MV2470, vehicle inspection report (VIR), is no longer an authorized WisDOT form. The VIR is printed at the Private Inspection Facility at the time of the emission inspection. Form MV2588, exchanged engine certificate, is no longer an authorized WisDOT form and is no longer used. Form MV2594, quality assurance inspection report, is no longer used. References to these forms should be removed from the Note.

How it relates to efficiency: These forms are obsolete for this Transportation Rule.

2) Current Rule: Trans 131.02(15) Note:

(15) "Federal rule" means 40 CFR part 51, subpart S, inspection/maintenance program requirements; final rule.

Note: All references made to the Federal Rule in this document are to 40 CFR Part 51, Subpart S Inspection/Maintenance Program Requirements; Final Rule dated November 5, 1992, as amended through January 1, 2001.

Proposed Change: The Final Rule has been amended through April 7, 2006. The date should either be updated or removed.

[57 FR 52987, Nov. 5, 1992, as amended at 58 FR 59367, Nov. 9, 1993; 61 FR 39037, July 25, 1996; 61 FR 40946, Aug. 6, 1996; 63 FR 24433, May 4, 1998; 66 FR 18178, Apr. 5, 2001; 71 FR 17711, Apr. 7, 2006]

3) Current Rule: Trans 131.02(24)

"Inspection station" means an inspection facility operated by a party under contract with the department for the purpose of conducting vehicle emission inspections required by s. 110.20, Stats.

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Proposed Change: Per Wis. Stat. S. 110.20(8) the inspection may be performed by a contractor or subcontractor.

How it relates to efficiency: This statute has been updated as a result of 2009 Wisconsin Act 228.

4) Current Rule: Trans 131.02 (38)

“Recognized automotive emission repair technician” means a person who has received and has proof of formal training in both diagnosis and repair of automotive engines, and related emissions systems.

Proposed Change: Add language that the technician must be in good standing with the MVIP, and in compliance with Ch 110 and 131.

How it relates to efficiency: Providing recognition for a technician who is not in compliance with statutes, codes, and program requirements creates potential harm to the motorist that provides no benefit to the goals of the emission inspection program.

BACKGROUND

In order for a shop to be recognized, they must have a technician with appropriate certifications on staff and register with the program. Once the business is registered it is listed on the program website and included on a list of recognized facilities provided to a customer when they receive a failed inspection report. Customers are required to use recognized shops from this list for repairs if they wish to qualify for a cost waiver (customer needs to spend a minimum of \$855 on repairs related to the failing test to receive a waiver).

Currently, there are several shops that are both emission inspection facilities and also a recognized repair facility. If there is an issue arises with a specific technician, such as fraudulent repairs or testing, we can remove their employee’s ability to operate as an emission inspection facility. However, in those situations we do not have a clean way to remove their recognized repair status. It is a loophole and creates a situation where the business is removed for violating emission testing laws but the State will still recommend them on websites and in print for repairs even though they violated codes and statutes.

5) Current Rule: Trans 131.02 (39)

“Recognized repair facility” means a franchised new car dealer, or other business with a Wisconsin sales tax number that performs emission repairs as a regular part of its business activities and employs at least one recognized automotive emission repair technician.

Proposed Change: Add language that the facility must be in good standing with the MVIP, and in compliance with Ch 110 and 131.

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How it relates to efficiency: Providing recognition and advertising a facility that is not in compliance with statutes, codes, and program requirements creates potential harm to the motorist that provides no benefit to the goals of the emission inspection program.

BACKGROUND
(SEE ABOVE)

6) Current Rule: Trans 131.02(45)

"Technical assistance center" means either a separate contractor facility or a portion of an inspection station which, under the direction of a master automotive technician, is equipped to perform both emission inspections and complete diagnostic evaluations of nonexempt vehicles.

Proposed Change: Per Wis. Stat. S. 110.20(8) the inspection may be performed by a contractor or subcontractor.

How it relates to efficiency: This statute has been updated as a result of 2009 Wisconsin Act 228.

7) Current Rule: Trans 131.02(54)

"Vehicle inspection report" means a serially numbered document issued at an inspection station or authorized inspection facility or technical assistance center or by an inspector designated by the department to perform the functions of a technical assistance center at the time of vehicle inspection, indicating that the vehicle has been inspected in accordance with the provisions of this chapter, and may include data reported electronically.

Proposed Change: The Vehicle Inspection Report is no longer centrally printed and serially numbered; it is printed at the time of inspection by the Private Inspection Facility. Remove reference to "serially numbered".

How it relates to efficiency: Obsolete.

BACKGROUND

The reports used to be batch jobs printed at a central location and numbered sequentially. They are now printed at the time of inspection at the Private Inspection Facility.

8) Current Rule: Trans 131.03(6)(d)(5)

If the inspection computer system is not able to download the vehicle OBD II records, the OBD inspection shall be aborted, and the vehicle shall be re-inspected with an OBD II inspection in a separate inspection facility inspection lane.

Proposed Change: Private Inspection Facilities have only one inspection lane. They may perform another inspection after performing a protocol check on the analyzer. Remove reference to inspecting on a separate inspection facility inspection lane.

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How it relates to efficiency: Obsolete. This is a result of 2009 Wisconsin Act 228 allowing Private Inspection Facilities to perform inspection maintenance tests as subcontractors.

BACKGROUND

Private Inspection Facilities do not have multiple lanes like the old centralized facilities.

9) Current Rule: Trans 131.03(10)(a)(1) REINSPECTIONS

The re-inspection shall take place within 30 days of the initial inspection or the owner or lessee shall present satisfactory evidence that the repairs and adjustments which were performed on the vehicle could not have been made within 30 days of the initial inspection. Additionally, the vehicle shall have been repaired or adjusted according to s. 110.20, Stats., and this chapter.

Proposed Change: Eliminate the requirement that the re-inspection must take place within 30 days.

How it relates to efficiency: This creates an unnecessary burden on the motorist that provides no benefit to the goals of the emission inspection program.

BACKGROUND

There is no benefit to make the motorist prove that repairs took longer than 30-days to repair. This is an unnecessary burden to the customer and the vehicle can be tested again by the Private Inspection Facility at any time.

10) Current Rule: Trans 131.03(10)(a)(2) REINSPECTIONS

The vehicle shall be accompanied by its previous vehicle inspection reports. Repair information, as completed by the person performing the repairs, shall be indicated in the space provided on the reports, unless it is reported electronically, upon performance of the repair. The completed repair section on the vehicle inspection report, or the data reported electronically, shall indicate all of the following:

Proposed Change: Add language to the first sentence stating that the motorist shall not be denied an inspection if they fail to produce previous inspection reports or repair data is not completed in the vehicle inspection report.

How it relates to efficiency: This creates an unnecessary burden on the motorist. Motorists frequently forget to bring their paperwork to the Private Inspection Facility and a re-inspection can still be satisfactorily performed.

BACKGROUND

Previously issued vehicle inspection reports are retained electronically for a minimum of two test cycles. We do want to keep the paper copies if repair information is entered, but the customer can still get a test. Shops also have the ability to enter repair data electronically.

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11) Current Rule: Trans 131.03(10) (c)

If the vehicle passes the re-inspection, the contractor shall retain all previously-issued vehicle inspection reports and issue a vehicle inspection report indicating compliance. If the vehicle does not pass the re-inspection, the contractor shall issue a vehicle inspection report indicating non-compliance. If the owner or lessee requests a waiver of compliance from emission limitations, the waiver investigator shall review the request and shall either approve or deny the request in accord with s. Trans 131.04. If approved, the waiver investigator shall retain all previously-issued vehicle inspection reports, except the latest on which the waiver is indicated as granted.

Proposed Change: Remove language stating that contractor shall retain **all** previously-issued vehicle inspection reports at time of re-inspection.

How it relates to efficiency: This creates an unnecessary burden on the contractor. Motorists frequently forget to bring their paperwork to the Private Inspection Facility and a re-inspection can still be satisfactorily performed. Previously issued vehicle inspection reports are retained electronically for a minimum of two test cycles. There is no need to keep paper copies.

12) Current Rule: Trans 131.03(10)(d)

The following limitations on the total number of inspections performed at no additional charge shall apply for each vehicle requiring compliance with this chapter:

1. A vehicle may receive no more than 2 re-inspections. The re-inspections shall occur within 30 days of initial inspection.

Proposed Change: Remove requirement the re-inspections shall occur within 30-days. Clarify that a minimum of 2 re-inspections may be provided at no charge.

How it relates to efficiency: This requirement is subject to the contract agreements. Including this requirement in the administrative code provides no benefit to the goals of the emission inspection program. The contractor is currently not charging for more than 2 re-inspections. Requiring the re-inspection to occur within 30-days places an unnecessary burden on the motorist.

13) Current Rule: Trans 131.03(11) (j) Inspection prohibited.

The vehicle is subject to a manufacturer's recall for emission problems and the recall repair has not been performed. Vehicles for which emission-related recall notices have been issued shall have the recall repairs completed prior to submitting the vehicle for inspection. The owners or lessees of these vehicles shall present proof of compliance with the recall notice at time of inspection, unless the emission-related recall notice has been issued within 45 days prior to submitting the vehicle for inspection. This paragraph applies to vehicles for which emission-related recall notices have been issued after January 1, 1995.

Proposed Change: Remove this language.

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How it relates to efficiency: Denying an inspection because of an open recall creates an unnecessary burden on the motorist. Language is included on the fail and reject vehicle inspection report advising motorists where they can find recall information.

14) Current Rule: Trans 131.03(11) (m) Inspection prohibited.

Upon a re-inspection, the vehicle operator fails to provide a properly completed repair form to the inspector, unless the repair information is reported electronically, upon performance of the repair.

Proposed Change: Remove this language.

How it relates to efficiency: This creates an unnecessary burden on the motorist. Motorists frequently forget to bring their paperwork to the Private Inspection Facility and a re-inspection can still be satisfactorily performed.

15) Current Rule: Trans 131.03(12) RECONSTRUCTED AND HOMEMADE VEHICLES.

Any nonexempt vehicle registered as reconstructed or homemade under s. 341.268, Stats., shall be inspected for compliance with requirements applicable to the model year of the vehicle as indicated on the vehicle's registration documents, unless the owner both requests that the vehicle be inspected by engine year and provides a completed MV2588, exchanged engine certification form, to the waiver investigator. In addition, the vehicle owner shall locate the engine number on the engine for purposes of engine year verification by the waiver investigator.

Proposed Change: Remove reference to form MV2588, exchanged engine certificate is no longer an authorized WisDOT form and is no longer used.

How it relates to efficiency: This form is obsolete for this Transportation Rule.

16) Current Rule: Trans 131.03(15)(a) VEHICLE INSPECTION REPORT

The operator of each vehicle inspected shall receive a vehicle inspection report, MV2470, at the conclusion of the inspection. The vehicle inspection report data may also be reported electronically. The inspection report, or the vehicle inspection report data reported electronically, shall indicate:

Proposed Change: Form MV2470, vehicle inspection report (VIR), is no longer an authorized WisDOT form. The VIR is printed at the Private Inspection Facility at the time of the emission inspection.

How it relates to efficiency: This form is obsolete for this Transportation Rule.

17) Current Rule: Trans 131.03(15)(b) VEHICLE INSPECTION REPORT

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Each operator of a vehicle failing the inspection shall receive an inspection report supplement containing repair, re-inspection and waiver application instructions, as well as information on the possible causes of failure found during the inspection.

Proposed Change: Include language for reject inspection results:

Each operator of a vehicle failing or rejecting the inspection shall receive an inspection report supplement containing repair, re-inspection and waiver application instructions, as applicable, as well as information on the possible causes of failure or rejection found during the inspection.

How it relates to efficiency: Vehicles with reject inspection results may need repairs. It is more efficient for the motorists to receive the instructions so they know what the options are.

BACKGROUND

A reject inspection result may occur due to the following:

- **System Not Ready:** A recently disconnected or replaced battery, or recent servicing or clearing codes with a scan tool are the most likely reasons for a vehicle's Onboard Diagnostic (OBD) system being not ready.
- **Non-Communications:** A vehicle would be rejected from testing due to non-communication if the vehicle's onboard computer did not send a signal to the emission testing equipment. This condition needs to be corrected before the vehicle can be tested.

18) Current Rule: Trans 131.03(15)(c) VEHICLE INSPECTION REPORT

Each operator of a vehicle failing the initial inspection shall receive a list of recognized automotive emission repair technicians and recognized repair facilities by area which includes information required under s. Trans 131.15. This listing may include other consumer information useful in obtaining vehicle emission repair service.

Proposed Change: Include language for reject inspection results.

Each operator of a vehicle failing *or rejecting* the initial inspection shall receive a list of recognized automotive emission repair technicians and recognized repair facilities by area which includes information required under s. Trans 131.15. This listing may include other consumer information useful in obtaining vehicle emission repair service.

How it relates to efficiency: Vehicles with reject inspection results also may need repairs. It is more efficient for the motorists to receive the instructions so they know what the options are. Motorists receive a list of recognized repair facilities. Receipts for waivers are only accepted from recognized repair facilities.

19) Current Rule: Trans 131.07(1)(c) Voluntary inspections.

The operator presents payment to the contractor of a monetary fee as determined by contract.

Proposed Change: The contractor is not currently charging for voluntary inspections. Change "as determined" to "if required."

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How it relates to efficiency: The fee is not being collected and is not part of the current contract. The fee may be required in subsequent contracts.

BACKGROUND

Some people bring vehicles in for testing that they are considering purchasing. A voluntary inspection fee is not currently being charged by the Private Inspection Facilities.

- 20) Current Rule:** Transportation Rule 131.08 stipulates how a motor vehicle owner subject to emission inspection requirements may request a temporary exemption if the vehicle is inoperative or the owner is absent or incapacitated. The Department provides the owner application form MVD2472 on which the owner provides their name, address, phone number and the reason for requesting the temporary exemption.

Proposed Change: Allow the application for exemption to be submitted in written format on form MVD2472, verbally via the telephone or electronically via the Internet. This could be expressed as "in a manner prescribed by the department".

How it relates to efficiency: This change will allow the Department to immediately grant qualified customers exemptions over the phone or online instead of requiring a written request.

BACKGROUND

When motorists are out-of-state during renewal time (snowbirds), they may request a temporary exemption until they return. We want to allow them to make this request electronically or over the phone instead of having to mail in a completed form.

- 21) Current Rule:** Trans 131.11(1)(a) Audits of inspection facilities.
All contractor inspection functions, including those occurring at the inspection stations, other authorized inspection facilities, technical assistance centers or other facility by an inspector designated by the department to perform the functions of a technical assistance center, and vehicles used to conduct remote sensing, shall be audited on an unscheduled basis, at a minimum, according to the frequency established in the federal rule.

Proposed Change: Include subcontractor. Per Wis. Stat. S. 110.20(8) the inspection may be performed by a contractor or subcontractor.

How it relates to efficiency: This statute has been updated as a result of 2009 Wisconsin Act 228.

BACKGROUND

Audits are performed by both the contractor (Opus) and by DOT staff.

- 22) Current Rule:** Trans 131.15(2) Data collection.

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"Motor Vehicle Inspection and Maintenance Program (MVIP)"

Whenever a nonexempt vehicle receives a re-inspection, the contractor shall collect the following emission repair information from the vehicle inspection report as required by s. Trans 131.03 (11).

Proposed Change: Add "shall *attempt to*". Remove reference to s. Trans 131.03 (11).

How it relates to efficiency: This creates an unnecessary burden on the motorist. Motorists frequently forget to bring their paperwork to the Private Inspection Facility and a re-inspection can still be satisfactorily performed. S. Trans 131.03 (11) is being removed as part of this for the same reason.

23) Current Rule: Trans 131.15(3) (b) Reporting.

Beginning in the third month of the vehicle emission inspection program, the contractor shall produce a summary report of the performance of local repair facilities that have repaired vehicles for re-inspection. The report shall be provided to the motorist at the time of initial vehicle emission inspection failure. The report shall be updated on a quarterly basis.

Proposed Change: The report is available on the contractor's website, and updated regularly. Add language stating that the report shall be provided to the motorist, *or available on the contractor's website*. Remove reference to updating quarterly.

How it relates to efficiency: Obsolete.

24) Current Rule: Trans 131.15(3) (c) Reporting.

(c) Repair facilities shall receive summary reports at least quarterly. Reports to the repair facility shall include all information made available to the public and may include reports on individual technicians if so requested by the employing repair facility.

Proposed Change: The report is available on the contractor's website, and updated regularly. Remove language.

How it relates to efficiency: Obsolete.

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TRANS 142

"Recreational Vehicle Dealer Trade Practices, Facilities and Records"

- This chapter applies to any person applying for or holding a Wisconsin recreational vehicle dealer or salesperson license. Relates to advertising and sales representations, purchase contracts, consignment agreements, condition disclosure, and dealer facilities and records.

Proposed Changes:

- 1) **Current rule:** Transportation rule 138.08(5)(a) requires motor vehicle dealers to maintain a permanent facility in the state. 138.08(5)(b) exempts motor home dealers if the dealer is selling motor homes at a rally or show sponsored by an established state, national, or international motor home or camping association with a minimum membership of 100 members. An exemption may not be issued more than once in any 4-year period. The event may not exceed 10 days in duration.

Proposed change: The exemption for Motor Homes in Transportation Rule 138.08(5)(b) should also be applied to Transportation Rule 142 to exempt Recreational Vehicles. Motor Home and Camping Associations represent Motor Home manufacturers and dealers as well as Recreational Vehicle manufacturers and dealers. Currently, Transportation Rule 142 does not provide the same facilities exemption for Recreational Vehicle dealers, which would prevent Motor Home and Recreational Vehicle associations from holding shows or rallies in Wisconsin without meeting a prohibitively onerous regulatory burden. Mirroring the exemption from 138.08(5)(b) and creating a 142.07(4)(b) to contain the exemption would allow these rallies to take place. Section 218.11(3), stats., requires RV dealers to maintain a permanent office and place of business.

How it relates to efficiency: Removes a regulatory burden for Recreational Vehicle dealers that Motor Home dealers are exempted from.

BACKGROUND

The Family Motor Coach Association conducts a weeklong exhibition in Wisconsin approximately every four years. The name of this year's is the "Family Motor Coach Association Family Reunion and Motorhome Showcase." The exhibition is expected to bring approximately \$20 million in spending to the state throughout the week in terms of attendance and sales revenue. The current exemption only applies to motor homes and not recreational vehicles, and in order to ensure this convention occurs as smoothly as possible and with a minimum of red tape, the exemption should be mirrored into Trans 142 as well.

Reference for more background (the FAQ page of FMCA):
<http://www.fmca.com/conventions-64/madison-2015/faqs-fmca-pomona-2015.html>.

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TRANS 145
“Neighborhood Electric Vehicle”

- The purpose of this chapter is to state that registration of neighborhood electric vehicles under s. 341.25 (1) (b), Stats., is valid only on roadways designated under s. 349.26, Stats.

Proposed change: Repeal ch. Trans 145.

How it relates to efficiency: Obsolete: 2009 Wisconsin Act 311, which took effect on October 1, 2010, eliminated the term “neighborhood electric vehicle” from state statutes and replaced it with the term “low-speed vehicle”. As a result, the provisions included in ch. Trans 145, relating to neighborhood electric vehicles, are obsolete and should be removed.

BACKGROUND

While 2009 Act 311 (Act) eliminated the term “neighborhood electric vehicle”, it also generally authorized on-road operation of low-speed vehicles (LSVs). Chapter Trans 145 was originally created to clarify that registration of neighborhood electric vehicles (NEVs) were valid only on locally-approved (“opt-in”) roads under s. 349.26, Stats. Prior to 2009 Act 311, the governing body of any municipality could enact an ordinance allowing the use of NEVs on a roadway that had a speed limit of 35 mph or less. In general, the Act allowed the operation of LSVs on any highway with a speed limit of 35 mph or less.

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TRANS 146
"Vehicle Registration and Fuel Trip Permits"

- *Provides department guidelines which apply to fuel trip permits and vehicle registration trip permits not in conflict with the International Registration Plan (IRP) or the International Fuel Tax Agreement (IFTA).*

Proposed Changes:

- 1) **Current Rule:** Trans 146.04 Exceptions—vehicle registration trip permit. Notwithstanding s. Trans 146.03, the requirement to obtain a vehicle registration permit does not apply to the following vehicles:
(4) Charter buses.

Proposed Change: Eliminate Trans 146.05(4) effective January 1, 2016.

How it relates to efficiency: This is requested as a result to an upcoming change on that date to the IRP, of which Wisconsin is a member jurisdiction.

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TRANS 157
"Titling of Vehicles Held by Trusts"

➤ *Defines the procedures for recording transfers of motor vehicles involving trusts.*

Proposed Changes:

- 1) **Current Rule:** Trans 157.05 stipulates the requirements of an application for certificate of title for a trust.

Proposed Change: The Note describes the forms required and how the forms can be obtained from DOT Materials Management. Form MV2493 is obsolete and should be replaced with form MV2488 Vehicle Transfer and Odometer Mileage Statement or substitute language "on a form prescribed by the Department".

How it relates to efficiency: Form MV2493 is obsolete and has been replaced with form MV2488.

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TRANS 175
"Rental Companies"

➤ *Operating requirements and prohibited practices for businesses renting motor vehicles.*

Proposed Changes:

- 1) **Current Rule:** Trans 175.09 Service requirements. Every rental company registration issued by the department of transportation shall be conditional upon the establishment of service thereunder within a reasonable time and maintenance thereof with reasonable continuity. Failure to maintain vehicles properly qualified for rental for a period of more than 1 year is a violation of this section unless permission is secured from the department to discontinue service for a longer period upon good cause shown. History: Cr. Register, April, 1970, No. 172, eff. 5-1-70; renum. from PSC 65.09, Register, October, 1982, No. 322, eff. 11-1-82.

Proposed Change: Eliminate Trans 175.09 Service requirements.

How it relates to efficiency: Obsolete: The subsection requires a rental company to provide rental company business without a discontinuance of rental service exceeding a year. The provision originates prior to motor carrier deregulation and has not been actively enforced in 35 years.

BACKGROUND

The requirement to provide truck rental service without interruptions of more than a year has not been a subject of DMV concern in over thirty years, but the provision remained in Trans Rule.

The requirement was created in 1970 by the Public Service Commission and transferred to the Department of Transportation in 1982. The rule may initially have been created during a prior regulatory era when perhaps a limited number of rental companies were authorized, and therefore it was desirable to ensure that one company or a small number of truck rental companies didn't dominate the truck rental company market. Or perhaps it was a patterned after provisions for other regulated industries at the time such as for for-hire trucking companies.

Because the state does not limit the number of truck rental companies to which it grants authority to operate, and because no ongoing reports to the state are required, this provision for continuous truck rental company service is not needed to protect the public interest.

"Red Tape Review" – DOT Administrative Code
Division of Motor Vehicles (DMV)

TRANS 178
"Unified Carrier Registration System"

- *Establishes, consistent with federal law, an annual fee under s.194.407, Stats., for a fleet of commercial motor vehicles that is used in interstate commerce, is subject to the Unified Carrier Registration Agreement, and whose owner or operator is based in Wisconsin, or is based in a state that is not participating in the UCR and has elected to declare Wisconsin as its base state.*

Proposed Changes:

- 1) Current Rule:** Trans 178.03 Fees. (1) Except as provided in sub. (2), as provided in 49 CFR 367.20, fees for registration year 2010 and thereafter are as follows:

Proposed Change: Update reference to Federal law. In Trans 178.03, replace '367.20' with 'Subpart B'. The new fees for the Trans 178 table of fees beginning with CY 2010 actually appear in 367.30, not 367.20. The number progresses as the fees are updated while preserving a history of the old fees. All the fees appear in Subpart B, therefore referring to Subpart B will keep Trans 178 accurate if the fees are subsequently modified.

How it relates to efficiency: The existing reference to Federal law is incorrect.

- 2) Current Rule:** Trans 178.04 Determining the number of commercial motor vehicles. (1) The fee is determined by the number of commercial motor vehicles that the registrant operates in interstate commerce, which shall be counted as follows as provided in the UCR Agreement:

(a) The number of commercial motor vehicles owned or operated subject to the fee under this chapter is the greater of the following:

1. The number reported on the MCS-150 most recently filed with the U. S. department of transportation. This does not apply to reports filed after October 23, 2015.

Note: As stated in s. Trans 178.02 (2), a commercial motor vehicle for purposes of UCR does not include a towed vehicle. Therefore, a carrier should exclude any towed vehicles reported on the MCS-150.

Proposed Change: Create reporting requirement for MCSA-1 after October 23, 2015. The subject of Trans 178 is the Unified Carrier Registration System. Trans 178.04(1)(a)1. includes the term "the MCS-150". A new subdivision should accept reporting on "Form MCSA-1" or "on a form prescribed by FMCSA" effective October 23, 2015. This is based on the Final Rule published by FMCSA at 78 Fed Reg 164, page 52608, on August 23, 2013, in Docket No. FMCSA-1997-2349.

Amend Trans 178.04(1)(a)1. to read:

Trans 178.04(1)(a)1. The number reported on the MCS-150 most recently filed with the U. S. department of transportation. This subdivision does not apply to reports filed after October 23, 2015.

"Red Tape Review" – DOT Administrative Code
Division of Motor Vehicles (DMV)

TRANS 178
"Unified Carrier Registration System"

Create Trans 178.04(1)(a)1m.

Trans 178.04(1)(a)1m. The number reported on form MCSA-1 most recently filed with the U.S. Department of Transportation. This subdivision applies only to reports filed after October 23, 2015.

Create Trans 178.02(6m)

Trans 178.02(6m) "MCSA-1" means the form prescribed by the federal Motor Carrier Safety Administration for application for USDOT Number/Operating Authority Registration.

How it relates to efficiency: Form MCS-150 will become obsolete effective October 23, 2015. Creating a new treatment for form MCSA-1 while retaining form MCS-150 will allow carriers to rely on MCS-150 filings until they are required to file form MCSA-1.

"Red Tape Review" – DOT Administrative Code
Division of Transportation System Development (DTSD)

TRANS 200
**"Erection of Signs on Public Highways and
Handicapped Parking Signs"**

➤ Relating to erection and maintenance of signs on public highways and signs related to reserved parking spaces for handicapped persons. This chapter does not apply to signs erected and maintained on property beyond the limits of a public highway, except signs related to reserved parking spaces for handicapped persons.

Current Rule: Trans 200.07 HANDICAPPED PARKING SIGNS. In addition to requiring the same sign standards (federal Manual on Uniform Traffic Control Devices), this section defines the design, size and installation requirements of the official traffic signs required under s.346.503, Wis. Stats., related to parking spaces reserved for handicapped persons.

Proposed Changes: Allow an alternative sign to designate parking stalls reserved for people with disabilities located on parking lots and parking ramps.

- 1) Amend Trans 200.07(2)
(2) SIGN DESCRIPTION DESIGN. For highways open to public travel, signs shall conform to the following requirements:
- 2) Amend Trans 200.07(2)(a)
200.07(2)(a) The sign shall consist of a white rectangle with longer dimension vertical, having green message, a green arrow, if required under this section, and a blue and white international symbol for the barrier-free environments. The sign may shall be reflective ~~or non-reflective~~.
- 3) Create Trans 200.07(2m)
(2m) ALTERNATIVE SIGN DESIGN. For parking spaces in parking lots, the following sign design may be used in lieu of the design criteria specified in sub. (2):
(a) The sign shall contain the international symbol for accessibility, the international symbol for barrier-free environments (wheelchair symbol on a square), or visually similar symbol. The symbol shall be within a square not less than five inches on a side.
(c) The sign shall contain either green or blue text on a white background or white text on a blue background.
(d) The sign may contain text stating "disabled parking", "handicapped parking" "reserved parking" or the amount of the forfeiture for parking in violation of the sign.
- 4) Repeal Trans 200.07(4), as the effective period has expired.

BACKGROUND

MUTCD standards (2B.35, R7-8 sign) are not required for off-highway use. MUTCD standard signs for handicapped parking are not regularly available at retail stores. The signs available for retail purchase display the International Symbol of Accessibility, but often use a different color scheme. Local municipalities will not always uphold tickets given for illegal parking, when these nonconforming signs are used to enforce existing law. Having an alternate standard design that is readily available will enable small businesses and others to easily conform to sign standards, eliminate confusion for the public, and allow for enforcement of law regarding illegal parking in a handicapped designated space. The Independent Living Council of Wisconsin supports the availability of a standard, alternate sign.

"Red Tape Review" – DOT Administrative Code
Division of Transportation Investment Management (DTIM)

TRANS 206
"Local Roads Improvement Program"

Proposed Changes:

- 1) **Recommendation:** Amend Trans 200.06(11)(d) as follows:

(d) Except as provided in s. 86.31(4), Stats., no ~~Ne~~ federal aid funds shall be used as the local match for an eligible project.

RATIONALE: This proposal amends Trans 206 to recognize the recent statutory change enabling local units of government to use contributions of tribal funds received from federally recognized Indian tribes, which could include sums originating from the federal government

The local roads improvement program prohibits using federal aid funds as the local match for a project. 2015 Wisconsin Act 55 (biennial budget) amended the prohibition to allow a political subdivision to use federal aid funds provided under Title 23, USC, towards the local match for an eligible project under the Local Roads Improvement Program (LRIP), if the funds used by the political subdivision are received from a federally recognized Indian tribe:

86.31(4) REIMBURSEMENT FOR IMPROVEMENTS. All costs of an improvement funded under this section shall be the responsibility of the political subdivision. At the completion of an improvement, the political subdivision may apply to the department for reimbursement of not more than 50% of eligible costs in the manner and form prescribed by the department. Eligible costs for which no reimbursement is made by the department may be paid by the political subdivision from contributions of tribal funds received from federally recognized American Indian tribes or bands in this state.

"Red Tape Review" – DOT Administrative Code
Division of Transportation Investment Management (DTIM)

TRANS 206
"Local Roads Improvement Program"

Proposed Changes:

- 1) **Recommendation:** Amend Trans 200.06(11)(d) as follows:

(d) Except as provided in s. 86.31(4), Stats., no ~~No~~-federal aid funds shall be used as the local match for an eligible project.

RATIONALE: This proposal amends Trans 206 to recognize the recent statutory change enabling local units of government to use contributions of tribal funds received from federally recognized Indian tribes, which could include sums originating from the federal government

The local roads improvement program prohibits using federal aid funds as the local match for a project. 2015 Wisconsin Act 55 (biennial budget) amended the prohibition to allow a political subdivision to use federal aid funds provided under Title 23, USC, towards the local match for an eligible project under the Local Roads Improvement Program (LRIP), if the funds used by the political subdivision are received from a federally recognized Indian tribe:

86.31(4) REIMBURSEMENT FOR IMPROVEMENTS. All costs of an improvement funded under this section shall be the responsibility of the political subdivision. At the completion of an improvement, the political subdivision may apply to the department for reimbursement of not more than 50% of eligible costs in the manner and form prescribed by the department. Eligible costs for which no reimbursement is made by the department may be paid by the political subdivision from contributions of tribal funds received from federally recognized American Indian tribes or bands in this state.

"Red Tape Review" – DOT Administrative Code
Division of Transportation Investment Management (DTIM)

TRANS 210
"Major Highway Project Numerical Evaluation Process"

In general, the proposed changes overhaul the Trans code to minimize the prescriptive nature of the major highway evaluation methodology initially defined in 1999, and reflect modern techniques, and to allow flexibility in the key analysis parameters that the department utilizes in its analysis. These proposed changes allow the department to use its benefit cost analysis (BCA) procedures as the primary foundation of project evaluation and ranking. It will also allow increased flexibility to use modern methods to evaluate project candidates.

Proposed Changes:

- 1) Amend Ch. Trans 210 (Title):
MAJOR HIGHWAY PROJECT NUMERICAL EVALUATION PROCESS
- 2) Amend Trans 210.01:
Trans 210.01 Purpose. In accordance with s. 85.05, Stats., this chapter sets forth the process and criteria used by the department to numerically evaluate projects considered for enumeration. This process for evaluating candidate major highway projects is used to advise the transportation projects commission. ~~This chapter establishes a minimum score that a project shall meet or exceed in order to be eligible for recommendation to the transportation projects commission.~~
- 3) Amend Trans 210.02:
Trans 210.02 Applicability. ~~The procedures in this~~ This chapter shall be applied to projects being considered for enumeration as major highway projects by the department.
- 4) Repeal Trans 201.03(4)
~~Trans 210.03(4) "Level of service" or "LOS" means the ability of the facility to satisfy both existing and future travel demand. Six levels of service are defined for each type of highway facility ranging from A to F, with LOS A representing the best operating conditions and LOS F the worst.~~
- 5) Amend Trans 210.05(intro.)
Trans 210.05 Minimum benefit requirement. ~~Proposed major highway projects having traffic flow or safety deficiencies shall receive a minimum requirement score of 10 points will require a benefit-cost analysis consistent with the department's best practice methodologies. Only these those projects generating a benefit-cost ratio of at least 1.0 shall be eligible for recommendation to the transportation projects commission. Traffic flow or safety deficiencies shall exist if either of the following conditions are satisfied:~~
- 6) Repeal Trans 210.05(1), (1) (note), (2) and (2)(note).
- 7) Repeal and recreate Trans 210.06:

Trans 210.06 Measures. The department shall use its best practices to evaluate and recommend Major highway projects to the Transportation Projects Commission. Best practice analytical techniques will include a detailed review of a project's ability to enhance Wisconsin's economy, improve highway mobility and safety, minimize environmental impacts, and serve community objectives. The measurement techniques used to

"Red Tape Review" – DOT Administrative Code
Division of Transportation Investment Management (DTIM)

TRANS 210
"Major Highway Project Numerical Evaluation Process"

evaluate these goals is continually evolving and improving with expanding data sources and analytical techniques. The evaluation is expected to include the following goals and objectives:

- (1) Improving Highway Safety.** Major highway projects can play an important role in improving the safety of Wisconsin's highways. Reducing the number of fatalities and injury crashes as well as the property and freight losses associated with these crashes is a primary goal of the department. A crash analysis will be performed to determine the number and severity of the crash problems on the affected highway.
- (2) Enhancing Wisconsin's Economy.** The Major projects will be evaluated to determine their ability to enhance Wisconsin's economy. A key component is estimated lower travel costs which serve to increase the competitiveness of existing businesses and enhance Wisconsin's ability to maintain and compete for jobs. The department will use benefit-cost analysis procedures as the primary foundation of this evaluation to determine the economic viability of candidate projects. The benefit-cost analysis will demonstrate that the reductions in travel costs exceed the costs of design, construction and long-term rehabilitation and maintenance costs of the facility. The analysis of reduced travel costs will include estimated travel time savings, safety savings, and vehicle operating cost savings. Additionally, the analysis will carefully consider critical supply chain corridors to support projects that are most critical for maintaining and preserving an efficient and reliable network for manufacturers and shippers. The economic analysis will also consider those areas of Wisconsin that are projected to have more growth in the amount of employment and tourism.
- (3) Improving Traffic Flow.** Major projects can play a significant role in improving traffic flow and reducing highway congestion. Reducing highway congestion will improve highway efficiency by reducing the total hours of vehicle delay, and will also improve travel reliability for individuals and businesses. An evaluation of traffic flow needs on the corridor will be used to demonstrate the level and extent of recurring congestion and the variability in non-recurring congested conditions on the corridor. Recurring congestion results from regular peak period conditions where the roadway is inadequate for the volume of vehicles. Non-recurring congestion exists when wide fluctuations in travel times occur due to events such as incidents, bad weather conditions, special events, holiday traffic and work zones.
- (4) Serving Community Objectives.** Overall community support is critical for the proposed major highway project. The level of community support will be demonstrated using the results of the comprehensive public outreach and involvement that occurs during the detailed environmental document process (National Environmental Policy Act and/or Wisconsin Environmental Policy Act).
- (5) Minimizing Environmental Impacts.** The evaluation process recognizes that highway projects can have effects on the quality of the human environment in the regions they serve. The environmental evaluation is based on the results of the detailed environmental document process (National Environmental Policy Act and/or

"Red Tape Review" – DOT Administrative Code
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TRANS 210
"Major Highway Project Numerical Evaluation Process"

Wisconsin Environmental Policy Act).

- 8) Repeal Trans 210.07.
- 9) Repeal Trans 210.08.

"Red Tape Review" – DOT Administrative Code
Division of State Patrol (DSP)

TRANS 252
"Escort Vehicles"

➤ *Establishing the general policies which apply to escort vehicles.*

Proposed Changes:

1) **Current Rule:** Trans 252.06 Police escorts exempted.

(1) An escort vehicle which is a marked police squad car is exempt from the vehicle, flag and sign requirements of s. Trans 252.05 (1) and (2). Normal police red or blue emergency lights shall be deemed to satisfy the warning lamps requirement of s. Trans 252.05 (3).

Proposed Change:

(1) "An escort vehicle which is a marked or unmarked police patrol vehicle equipped with clearly visible red and blue lighting to the front and rear as defined in 347.25(1m)(a) and 347.25(1m)(b), is exempt from the vehicle, flag and sign requirements of s. Trans 252.05 (1) and (2)."

BACKGROUND

Police Departments have limited resources when it comes to fleet vehicles. Vehicles available for escort duties may be limited and may not always be fully marked. Wisconsin state law requires that all motorists obey the visual and audible signal from both marked and unmarked police patrol vehicles equally as referenced in 346.19, yielding to an authorized emergency vehicle. Further, if the marked or unmarked patrol vehicle is equipped as required by 347.25(1m)(a) and (b) it is authorized to operate as an escort vehicle and given special right of way authority. Advances in emergency lighting technology have made unmarked patrol vehicles lighting almost as visible as that of lighting on fully marked patrol vehicles.

Statute Citations:

340.01(3) "Authorized emergency vehicle" means any of the following:

(a) Police vehicles, whether publicly or privately owned, including bicycles being operated by law enforcement officers.

346.19 What to do on approach of emergency vehicle.

(1) Upon the approach of any authorized emergency vehicle giving audible signal by siren the operator of a vehicle shall yield the right-of-way and shall immediately drive such vehicle to a position as near as possible and parallel to the right curb or the right-hand edge of the shoulder of the roadway, clear of any intersection and, unless otherwise directed by a traffic officer, shall stop and remain standing in such position until the authorized emergency vehicle has passed.

347.25(1m)

(a) A police vehicle under s. 340.01 (3) (a) may be equipped with a blue light and a red light which are flashing, oscillating or rotating.

(b) If the vehicle is so equipped, the lights shall be illuminated as required under s. 346.03 or 346.215 (2) (a) when the operator of the police vehicle is exercising the privileges granted under s. 346.03 or 346.215 (2) (a). On a marked police vehicle, the blue light shall be mounted on the passenger side of the vehicle and the red light shall

"Red Tape Review" – DOT Administrative Code
Division of State Patrol (DSP)

TRANS 252
"Escort Vehicles"

be mounted on the driver side of the vehicle. When in use on an unmarked police vehicle, the blue light shall be displayed on the passenger side of the vehicle and the red light shall be displayed on the driver side of the vehicle. The lights shall be designed and displayed so as to be plainly visible and understandable from a distance of 500 feet during normal sunlight and during hours of darkness. No operator of a police vehicle may use the warning lights except when responding to an emergency call or when in pursuit of an actual or suspected violator of the law, when responding to but not upon returning from a fire alarm, when necessarily parked on a highway in a position which is likely to be hazardous to traffic using the highway, or as authorized under s. 346.215 (2) (a).

346.215 Emergency vehicles operated as escorts and rights-of-way related to escorted vehicles.

(1) In this section, "emergency vehicle" means an authorized emergency vehicle as defined in s. 340.01 (3) (a), (c), (dm), (e), (f), (g), (h), or (i).

(2)(a) Except as provided in par. (b), and notwithstanding s. 346.03 (1) and (4), the operator of an emergency vehicle escorting any vehicle or procession of vehicles may exercise the privileges specified in s. 346.03 (2) (b) if the operator of the emergency vehicle is giving visual signal as described in s. 346.03 (3). The operator of the emergency vehicle under this subsection is not required to give an audible signal as described in s. 346.03 (3). This subsection applies only if the vehicle, or in the case of a procession of vehicles the entire procession, is escorted by at least 2 emergency vehicles, at least one of which is leading the vehicle or procession of vehicles and at least one of which is at the rear of the vehicle or procession of vehicles, and only if the requirement under sub. (4) is satisfied. Notwithstanding ss. 346.18 (3), 346.37 (1) (c) 1., and 346.46 (1) and (2), any operator of a vehicle being escorted under this subsection may accompany these emergency vehicles as they proceed past any red or stop signal or stop sign in accordance with the privileges specified in this subsection.

(b) The operator of an emergency vehicle escorting a vehicle or procession of vehicles, and the operator of any vehicle being escorted, shall yield the right-of-way in accordance with s. 346.19 upon the approach of an authorized emergency vehicle giving an audible signal by siren.

(3) Except as provided in sub. (2) (b), the operator of a vehicle other than an escorted vehicle or escorting emergency vehicle shall yield the right-of-way at an intersection to an escorted vehicle or escorting emergency vehicle and shall not, except when authorized to do so by a traffic officer, drive between these escorting and escorted vehicles.

(4) The privileges specified in sub. (2) (a) do not apply to the operator of an emergency vehicle unless, prior to escorting any vehicle as provided under sub. (2) (a), the employer of the operator of the emergency vehicle has provided written guidelines for its employees regarding the escorting of vehicles under this section.

"Red Tape Review" – DOT Administrative Code
Division of Transportation System Development (DTSD)

TRANS 253

**"Multiple Trip Overweight and Oversize Permits for Vehicles
Operating Near the Wisconsin-Michigan Border"**

- The purpose of this chapter is to establish standards and procedures for the issuance of overweight and oversize permits for the transportation of commodities and goods in Wisconsin, within 11 miles of the Wisconsin-Michigan border, pursuant to s. 348.27(9)(a), Stats.

Proposed Changes:

- 1) Trans 253.01 ("Purpose")
 - a. Delete "border, pursuant to s. 348.27 (9) (a), Stats." and substitute "border and upon certain highways, pursuant to s. 348.27 (9), Stats."
- 2) Trans 253.02 ("Definitions")
 - a. Delete "348.27 (9) (a)," and substitute "348.27 (9),".
 - b. Delete ", which includes permit pages, copies of all written approvals for movement on local highways, a copy of this chapter, a copy of ch. Trans 251, and any other written conditions of movement issued by the department."
- 3) Trans 253.04 ("Permit application")
 - a. Modify sub. (1) to mirror language provided in s. Trans 255.03 (1) and (1m).
 - b. Modify sub. (2) to mirror language provided in s. Trans 255.03 (2) (a) and (b). In addition, add a new paragraph, "(c)", under this subsection that reads "By facsimile machine to the department's oversize and overweight permit section."
 - i. *NOTE:* This permit is currently not available online; however, the department will accept applications submitted by fax.
 - c. Delete sub. (4)
 - d. Delete sub. (5)
 - e. Delete sub. (6)
 - f. Delete sub. (7)
 - g. Delete sub. (8)
 - h. In the first explanatory note under sub. (9), delete "Motor Carrier Services Section Permit Unit" and substitute "Oversize and Overweight Permit Section".
 - i. In the second explanatory note under sub. (9), delete "or by mail to the Motor Carrier Services Section Permit Unit. The Motor Carrier Services Section Permit Unit" and substitute ", or by mail or facsimile machine to the Oversize and Overweight Permit Section. The Oversize and Overweight Permit Section". In addition, delete "Room 151," from this explanatory note.
- 4) Create "Trans 253.045 Permit Amendments"
 - a. Mirror language provided in s. Trans 255.04 (1), (2) and (3).
 - b. Add a new subsection, "(4)", that reads "If the request involves streets or highways other than those within the state trunk highway system, the application for an amendment shall be accompanied by a written statement of route approval by the officer in charge of maintenance of the other highway."
- 5) Trans 253.05 ("Eligibility")
 - a. Amend sub. (2) as follows:

"Red Tape Review" – DOT Administrative Code
Division of Transportation System Development (DTSD)

TRANS 253

**"Multiple Trip Overweight and Oversize Permits for Vehicles
Operating Near the Wisconsin-Michigan Border"**

- i. Delete "border." and substitute "border, or on any highway or highway route not specified under s. 348.27 (9), Stats."
 - b. Amend sub. (5) (title) as follows:
 - i. Delete "WEIGH." and substitute "WEIGHT."
 - c. Amend sub. (5) as follows:
 - i. Delete "154,000" and substitute "164,000".
- 6) Trans 253.06 ("Validity")
 - a. Delete sub. (4)
 - b. Amend sub. (6) as follows:
 - i. Delete "with attached local road approval letters".
 - c. Amend sub. (16) as follows:
 - i. After "permit.", insert "The department may suspend a permit, or any of its conditions, because of seasonal highway conditions."
- 7) Trans 253.065 ("Times of operation")
 - a. Delete subs. (2) and (3).
 - b. Modify sub. (4) to add language mirroring the language provided in s. Trans 255.12 (6).

BACKGROUND

These proposed changes are intended to:

- Bring Trans 253 into conformance with s. 348.27(9), Stats., which has been amended since ch. Trans 253 was originally created.
- Eliminate existing provisions that have no relevance to the particular permit ("Michigan-border permit") covered under this chapter (e.g. certain time of operation restrictions, etc.).

"Red Tape Review" – DOT Administrative Code
Division of State Patrol (DSP)

TRANS 310
"Child Restraint Standards and Exemptions"

- *To establish* to standards and specifications for child safety restraint systems in motor vehicles, and to delineate exceptions to their use. This chapter references federal standards applicable to child safety restraint systems and addresses the proper manner of wearing the restraints.

Proposed Changes:

- 1) **Current Rule:** Trans 310.01 Purpose and scope.
(2) **APPLICABILITY.** This chapter applies to the use of safety restraint systems or safety belts by children under the age of 8, being transported in a motor vehicle. The term motor vehicle includes, but is not limited to, automobiles, station wagons, vans, trucks and motor homes.

Proposed Change:

(2) **APPLICABILITY.** This chapter applies to the use of safety restraint systems or safety belts by children under the age of 8, being transported in a motor vehicle. ~~The term motor vehicle includes, but is not limited to, automobiles, station wagons, vans, trucks and motor homes.~~

BACKGROUND

The term "motor vehicle" is defined in s. 340.01 (35), Stats. Definitions in s. 340.01, Stats., apply to this chapter.

- 2) **Current Rule:** Trans 310.04 Provisions for use.
310.04 (1) No person subject to the provisions of s. 347.48 (2m) (c) and (4) (am), Stats., may transport a child under the age of 4 in a motor vehicle unless the child is properly restrained in a child safety restraint system.
(2) No person subject to the provisions of s. 347.48 (2m) (c) and (4) (as) 4., Stats., may transport a child who is at least 4 years old but less than 8 years old in a motor vehicle unless the child is properly restrained in a child safety restraint system or a safety belt.
Note: A Family Shopping Guide to Infant/Child Automobile Safety Seats is available for distribution at the following locations: Office of Transportation Safety, P.O. Box 7910, Madison, WI 53707; All State Patrol Region Headquarters; All Driver Licensing Examination Stations.

Proposed Change:

310.04 ~~(1)~~ No person subject to the provisions of s. 347.48 (2m) (c) and (4) (am), Stats., may transport a child under the age of 8 years unless the child is transported in a manner compliant with s. 347.48 (4)(as), Stats. ~~under the age of 4 in a motor vehicle unless the child is properly restrained in a child safety restraint system.~~

~~(2) No person subject to the provisions of s. 347.48 (2m) (c) and (4) (as) 4., Stats., may transport a child who is at least 4 years old but less than 8 years old in a motor vehicle unless the child is properly restrained in a child safety restraint system or a safety belt.~~
~~**Note:** A Family Shopping Guide to Infant/Child Automobile Safety Seats is available for distribution at the following locations: Office of Transportation Safety, P.O. Box 7910, Madison, WI 53707; All State Patrol Region Headquarters; All Driver Licensing Examination Stations.~~

"Red Tape Review" – DOT Administrative Code
Division of State Patrol (DSP)

TRANS 310
"Child Restraint Standards and Exemptions"

BACKGROUND

In regards to sub. (2), the statutes regarding the provisions for use of child safety restraint systems have changed and are now stricter than they were at the time when this administrative code provision was written.

In regards to the "Note", this is a document that was published in 1981 that is currently only available at the Historical Society. This note could be removed. Legal counsel might need to check to see if this document is legally required. If it is required, it has not been produced or amended in 34 years. The document is also not available as the note suggests. Although the language remaining in Trans 310.04 merely restates the statutory requirements of the cited statutes, State Patrol can write citations for violations of rules, per s. 85.16(2), stats.

3) Current Rule: Trans 310.05 Exemptions.

(1) A child under the age of 8 years who, because of a medical condition, body size or a physical disability, is incapable of being transported in a child safety restraint system, may be transported without a safety restraint system or safety belt providing:

Proposed Change: (1) A child ~~under the age of 8 years~~ who, because of a medical condition, body size or a physical disability, is incapable of being transported in a child safety restraint system, may be transported without a safety restraint system or safety belt providing:

BACKGROUND

This phrase "under the age of 8 years" defines what is meant by child.

"Red Tape Review" – DOT Administrative Code
Division of State Patrol (DSP)

TRANS 315

"Safety Belt Usage: Physical or Medical Exemption"

- *To establish the criteria for exemption from Wisconsin's mandatory safety belt usage law for persons, who because of a physical or medical condition, cannot be properly restrained in a safety belt.*

Proposed Changes:

- 1) **Current Rule:** Trans 315.01 Purpose and scope.

(2) **APPLICABILITY.** This chapter applies to all persons who are at least 4 years old and are subject to the safety belt installation and usage requirements of s. 347.48, Stats.

Proposed Change: Delete "4" and insert "8", regarding to the chapter's applicability to persons of a certain age.

BACKGROUND

Section 347.48 (2m) has been amended. Children under 8 are now required to be in child safety restraint system, not children under 4.

- 2) **Current Rule:** Trans 315.03 Exemption for physical or medical condition.

(1) A person who is at least 4 years old is exempted from the provisions of s. 347.48 (2m), Stats., if the person cannot be properly restrained in a safety belt because of a physical or medical condition providing:

Proposed Change: Delete "4" and insert "8", regarding to the chapter's applicability to persons of a certain age.

BACKGROUND

Section 347.48 (2m) has been amended. Children under 8 are now required to be in child safety restraint system, not children under 4.

- 3) **Current Rule:** Trans 315.03 Exemption for physical or medical condition.

(2) A person at least 4 years old being transported in an authorized emergency vehicle as defined in s. 340.01 (3), Stats., when the vehicle is being operated in the performance of official duties, may be transported without a safety belt when the physical or medical needs of the person make restraint by safety belt unreasonable.

Proposed Change: Delete "4" and insert "8", regarding to the chapter's applicability to persons of a certain age.

BACKGROUND

Section 347.48 (2m) has been amended. Children under 8 are now required to be in child safety restraint system, not children under 4.

"Red Tape Review" – DOT Administrative Code
Division of Transportation System Development (DTSD)

TRANS 400
"Wisconsin Environmental Policy Act Procedures for Department Actions"

BACKGROUND

Chapter Trans 400 implements the Wisconsin Environmental Policy Act (WEPA), s. 1.11, Stats., by establishing the policy and procedures by which the Wisconsin Department of Transportation (WisDOT) will evaluate and consider the environmental effects of its major actions. Local units of government must also follow Trans 400 when undertaking local projects with state or federal funding.

To maximize availability of federal funds, Trans 400 was written to parallel the National Environmental Policy Act (NEPA) regulations promulgated by various federal agencies. Recent updates to federal law, rules and guidance, including updates to the federal transportation funding bill MAP-21 and the Federal Highway Administration's and Federal Transit Administration's NEPA regulations and guidance, have incorporated provisions that are intended to streamline and allow innovation in the environmental review process. As a result, Trans 400 potentially imposes more restrictive procedural requirements on the department than state statute or federal laws. The proposed updates would incorporate recent federal streamlining provisions to re-establish consistency between federal and state rules for environmental documents related to transportation. The proposed updates also consolidate references to federal rules and policies to improve readability and reduce future rulemaking efforts to keep specific citations current.

In addition, the current rule contains non-substantive errors and provisions that may be perceived as internally inconsistent. The proposed updates address many of these.

The proposed updates are anticipated to have no direct effect on any specific business, business sectors, or public utility rate payers. This rulemaking will benefit local units of government by providing more streamlined and innovative approaches to Trans 400 environmental reviews. The state's economy as a whole can be expected to benefit, albeit indirectly, from the expedited environmental review process for transportation projects proposed under this rulemaking. Implementation and compliance costs, which will be borne by the department and local units of government, are expected to decrease due to fewer procedural requirements in the environmental review process.

Neighboring states either follow federal NEPA regulations when seeking federal approval and/or funding, or have adopted potentially more restrictive environmental regulations as a matter of that state's preferred policy. Illinois, Iowa, and Michigan do not have state-level environmental policy acts like WEPA. Minnesota does have a state-level environmental policy act like WEPA, found at Minn. Stat. §§ 116D.01 to 116D.06. Unlike Wisconsin's Trans 400, Minnesota's implementing rules apply generally to all state agencies. Minnesota's rules are found at Minn. Admin. R. ch. 4410. The Minnesota DOT also has policy-level guidance for environmental documentation, available here (accessed Feb. 4, 2015):

<http://www.dot.state.mn.us/planning/hpdp/>.

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Proposed Changes:

Chapter Trans 400

**WISCONSIN ENVIRONMENTAL POLICY ACT
PROCEDURES FOR DEPARTMENT ACTIONS**

Trans 400.01	Authority.
Trans 400.02	Purpose.
Trans 400.03	Applicability.
Trans 400.04	Definitions.
Trans 400.05	Federal regulations adopted.
Trans 400.06	Policy.
Trans 400.07	Action designation and environmental documentation.
Trans 400.08	Categorization of department actions.
Trans 400.09	Scoping.
Trans 400.10	Preparation and content of environmental documents.
Trans 400.11	Distribution and review of environmental documents.
Trans 400.12	Public hearings.
Trans 400.13	Decision on proposed action.
Trans 400.14	DEIS and FEIS reevaluation and supplement.

Trans 400.01 Authority.

(1) This chapter is promulgated under the authority of ss. 1.11, 85.16 (1) and 227.11 (2), Stats.

(2) As specified in s. 227.01 (13) (d), (e) and (y), Stats., the definition of "rule" and the requirement to promulgate statements of general policy and interpretation of statutes as administrative rules do not apply to action or inaction of the department which relates to the use of highways and is made known by signs or signals, relates to the construction or maintenance of highways or bridges, except as provided in ss. 84.11 (1r) and 85.025, Stats., or prescribes measures to minimize the adverse environmental impact of bridge and highway construction and maintenance.

(3) As specified in ss. 20.395 (9) (qx), 84.01 (15), 84.015 and 84.03 (1), Stats., the department is directed to construct and maintain highways and related projects within the meaning of title 23, United States Code, and all acts amendatory and supplementary thereto, and the federal regulations issued under that code, as well as to receive and expend all funds in accordance with the requirements of acts of congress making such funds available.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92.

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Trans 400.02 Purpose. The purpose of this chapter is to implement the Wisconsin environmental policy act, s. 1.11, Stats., by establishing the policy by which the department will consider environmental effects of its major actions on the quality of the human environment, by identifying actions under the jurisdiction of the department that have the potential to affect the quality of the human environment, by determining the appropriate environmental analysis and documentation necessary for each action, by ensuring an opportunity for public participation in the process, and by establishing procedures by which the department will consider the effects of its actions on the quality of the human environment.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92.

Trans 400.03 Applicability.

- (1) The provisions of this chapter shall apply to all department actions which may affect the quality of the human environment.
- (2) Where another state or federal agency has concurrent responsibility with the department for a proposed EA action, a joint environmental assessment, or EA, may be prepared with the other agency if the EA meets the requirements of this chapter. The department shall make an independent judgment on the need for an environmental impact statement, or EIS, in accordance with this chapter.
- (3) Where a proposed action involves another state or federal agency approval or decision, and it has been determined that an EIS shall be prepared in accordance with NEPA or WEPA, the WEPA requirement for an EIS under this chapter may be waived if:
 - (a) A joint EIS is prepared; or
 - (b) After review of the other state or federal EIS by the department, it appears that the requirements as to content of the EIS prescribed in s. 1.11, Stats., and this chapter have been met, and the EIS was developed and prepared through appropriate participation by the department with the other agencies in a coordinated effort to satisfy the requirement of NEPA and WEPA.
- (4) If the joint EIS under sub. (3) appears to comply with the requirements of WEPA and this chapter, public hearings shall be held in accordance with this chapter unless they are held in Wisconsin by the lead agency with effective participation by the department.
- (5) The department may accept certification of compliance by a county, city, village or town with any environmental laws applicable to improvements under the jurisdiction of the local government for which reimbursement is sought from the department through the local roads improvement program in s. 86.31, Stats.

Note: The National Environmental Policy Act (NEPA) requires the federal government to prepare environmental documentation for major federal actions.

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The Wisconsin Department of Transportation prepares the federal environmental documentation for review and approval by the federal government of actions for which federal funds are to be used by the Department. The requirements for federally funded actions are followed by the Department when federal funds are involved. These federally funded actions are also actions of the Department to which the Wisconsin Environmental Policy Act (WEPA) applies. Finally, when the Department pursues an action for which only State funds are involved, NEPA does not apply, but WEPA still applies. The intent of this chapter is to direct the Department to follow NEPA and its implementing regulations for both NEPA and WEPA purposes when federal funds are involved in the proposed action. The intent is to apply WEPA and its implementing rules in this chapter when only State funds are involved in the proposed actions, but to make the WEPA implementing rules track the federal law and federal regulations as closely as possible.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92; am. (2), Register, February, 1999, No. 318, eff. 3-1-99.

Trans 400.04 Definitions. In this chapter:

- (1) "Access roads" means the various, incidental, public roads that provide service and access to state parks, national and state forests, and state institutions.
- (2) "Alternatives" means other reasonable actions or activities which may achieve the same or altered purpose of the proposed action including the alternative of taking no action.
- (3) "Categorical exclusion" means an action which meets the definition of the term in the ~~guidelines published by the United States council on environmental quality as a federal rule in 40 CFR 1508.4, July 1, 1990, and the rule published jointly by the federal highway administration and urban mass federal transit administration of the United States department of transportation in and in 23 CFR 771.117, 771.118, April 1, 1994, or the procedures published by chapter 6 of order 5050.4B of the federal aviation administration of the United States department of transportation as order 5050.4A, chapter 3, paragraph 23, October 8, 1985, or other actions of the department for which neither an EA, EIS nor other environmental documentation is required by this rule.~~

Note: The specific versions of federal regulations and federal agency orders as referenced throughout this chapter are adopted in s. Trans 400.05 and are reproduced at Appendix 1 to this chapter.

- (4) "Cooperating agency" means any Native American tribe, or any local, state or federal agency, other than the lead or transportation agency, which has jurisdiction by law over the proposed action or which has special expertise with respect to any relevant environmental effect generated by the proposed action, or alternative.

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- (5) "Department" means the Wisconsin department of transportation, or a local agency when acting under the direction of the department.
- (6) "DEIS" or "draft environmental impact statement" means the preliminary version of an EIS.
- (7) "EA" or "environmental assessment" means a concise, comprehensive document containing an analysis of a proposed action to determine the significance of the action's environmental effects and whether or not the action constitutes a major action.
- (8) "Environmental effect" or "environmental impact" means a beneficial or adverse influence resulting from an action of the department. The term includes ecological, aesthetic, historic, cultural, economic, social or health effects.
- (9) "EIS" or "environmental impact statement" means a written report containing an analysis of a proposed major action and its alternatives to identify and address their effects on the quality of the human environment.
- (10) "ER" or "environmental report" means a brief document used internally by the department to demonstrate a proposed action fits the criteria or conditions for approval as a categorical exclusion in 23 CFR 771.117 (d), April 1, 1991, or has met the review criteria of paragraph 23.a. of chapter 3 of federal aviation administration order 5050.4A of October 8, 1985, under s. Trans 400.08 (1) (d) or has been properly coordinated with other agencies having jurisdiction by law over specific activities.
- (11) "FEIS" or "final environmental impact statement" means the final version of an EIS.
- (12) "FONSI" or "finding of no significant impact" means an approved, completed EA containing a finding that the proposed action is not a major action.
- (13) "Human environment" means the natural or physical environment and the relationship of people with that environment.
- (14) "Joint lead agency" means the department together with any local, state or federal agency having equal responsibility for the preparation, content and processing of an environmental document for a proposed action.
- (15) "Ldn" means the directly measurable sound level quantity using the day-night average sound level methodology developed for the United States environmental protection agency for estimating noise impacts at both civil and military airports.
- (16) "Lead agency" means the local, state or federal agency preparing or having taken primary responsibility for preparing the environmental document for a proposed action.
- (17) "LEIS" or "legislative environmental impact statement" means a written report containing an analysis to identify and address the effects on the quality of the human

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environment of a department-initiated report or recommendation on a proposal for legislation.

(18) "Major action" means an action that will have significant effects on the quality of the human environment. It does not include actions whose significance is based only on economic or social effects.

(19) "Major and significant new proposal" means a new proposal developed by the department which, if legislatively authorized and funded, may significantly affect the quality of the human environment and represents a significant departure from, or expansion of, the department's existing responsibilities by substantially expanding or substantially reducing total resources allocated to any existing programs.

(20) "Mitigation" means avoiding, minimizing, rectifying, reducing, eliminating or compensating for adverse environmental effects of a proposed action.

(21) "NEPA" means the national environmental policy act, 42 USC 4321, et seq.

(22) "Notice of availability," "notice of intent," "notice of opportunity for public hearing" or "notice of public hearing" means a class 1 notice as defined in ch. 985, Stats.

(22m) "Participating agency" means any Native American tribe or any local, state or federal agency, other than the lead agency, with an interest in the project. "Participating agency" includes cooperating agencies but does not include nongovernmental organizations or other private entities.

(23) "ROD" or "record of decision" means a public record which identifies:

- (a) The department's selected course of action.
- (b) The selected action's environmental effects.
- (c) Alternatives to the action that were considered.
- (d) Mitigation measures selected.
- (e) Reason for rejection of suggested reasonable mitigation measures.

(24) "Reevaluation" means the review of a ~~DEIS or FEIS~~ an approved draft or final environmental document to assess whether there have been significant changes in the proposed action, the affected human environment, the anticipated environmental impacts, or the proposed mitigation measures.

(25) "Scoping" means an early, open process with the public and public agencies for identifying the anticipated range of issues for a proposed action.

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(26) "Significant effects" means considerable and important impacts of department actions on the quality of the human environment.

(27) "SEE" or "system-plan environmental evaluation" means a conceptual environmental evaluation, that shall be considered the "detailed statement" required by statute commonly known as "environmental impact statement," developed as an integral element of a system plan that contemplates that if the plan recommendations are implemented, there will be subsequent project or site-specific environmental reviews. A SEE also serves as the LEIS regarding reports or recommendations on legislation required to implement the plan.

(28) "System plan" means a plan which identifies transportation facility or service needs for a statewide system. The needs are identified conceptually without addressing specific design and locational details.

(29) "Tiering" means the coverage of general matters in a broad EIS with subsequent narrower statements or environmental analyses which incorporate by reference the general discussion of the EIS.

(30) "WEPA" means the Wisconsin environmental policy act, s. 1.11, Stats.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92; am. (7) and (12), Register, February, 1999, No. 518, eff. 3-1-99.

Trans 400.05 Federal regulations adopted. ~~Federal regulations, 23 CFR 771.115, 771.117, 771.119(a) and 771.123(a), April 1, 1998, adopted jointly by the federal highway administration and urban mass transit administration of the United States department of transportation, and its federal aviation administration order 5050.4A, chapter 3, paragraphs 20, 21, 22, and 23, October 8, 1985, pursuant to 40 CFR 1508.4, July 1, 1998, as approved by the United States council on environmental quality, and 40 CFR 1506.8 and 1508.17 are adopted by the department and are attached hereto in appendix 1. References throughout this rule to federal regulations and orders are to the following specific versions, which are hereby adopted by the department and are attached hereto in appendix 1; 23 CFR ss. 771.115, 771.117, and 771.118, April 1, 2014; 40 CFR ss. 1500.4, 1500.5, 1506.8, and 1508.4, July 1, 2014; 49 CFR 266.19, October 1, 2014; and the United States department of transportation federal aviation administration order 5050.4B, chapters 6, 7, and 9, April 28, 2006.~~

Note: The "urban mass transit administration" has been renamed the "federal transit administration," but the federal rule text has not yet been changed.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92; am. Register, February, 1999, No. 518, eff. 3-1-99.

Trans 400.06 Policy.

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(1) The department shall strive to protect and enhance the quality of the human environment in carrying out its basic transportation mission and shall consider pertinent environmental factors consequential to any proposed action. The policy expressed in this section and the procedures defined in this chapter shall be implemented as an integrated process beginning during the initial planning stage for department action.

(2) The department acknowledges WEPA as a legal obligation shared by all divisions of the department to evaluate and be aware of environmental consequences of proposed actions.

(3) Alternative courses of action shall be evaluated and decisions on proposed actions shall be made in the best overall public interest consistent with state and federal statutes and regulations. Decisions on proposed actions shall be based upon a balanced consideration of the findings of the environmental document, public comments, and the need for safe and efficient transportation consistent with local, state and national environmental goals.

(4) Public involvement, interagency coordination and consultation, and a systematic interdisciplinary approach to analysis of the issues shall be essential parts of the environmental process for proposed actions.

(5) Measures necessary to avoid, minimize and to mitigate for the mitigation of adverse environmental impacts of proposed actions shall be part of the development and evaluation of alternatives.

(6) The department shall implement procedures to make the WEPA process more useful to decision makers and the public by reducing paperwork and reducing delay utilizing the means for achieving these goals as specified in the rules of the United States council on environmental quality at 40 CFR 1500.4 and 1500.5, July 1, 1990, that are attached hereto in appendix 1. Environmental documents shall be concise, clear, and to the point and emphasize real environmental issues and alternatives.

(7) In carrying out its responsibility under s. 1.11, Stats., the department shall substantially follow the guidelines issued as rules by the United States council on environmental quality and federal transportation agencies.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92.

Trans 400.07 Action designation and environmental documentation.

(1) The designations, EIS and CE shall be used to categorize department actions. Actions designated EIS actions shall be considered major actions, and actions designated CE shall be considered categorical exclusions. An EA and an ER describe procedures to be followed to categorize department actions. The EA process yields a determination whether an action requires an EIS or a finding of no significant impact. The ER process

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confirms whether an action falls within a categorical exclusion or requires further evaluation and documentation.

(2) ~~Except for actions designated CE actions which do not require any environmental documentation, actions~~ Actions and procedures designated EIS, EA or ER shall require the following environmental documentation:

(a) *EIS or LEIS.* An EIS action is a major action. An LEIS may be prepared for a major and significant new proposal.

1. An environmental impact statement, or EIS, shall be prepared for major actions.

2. A legislative environmental impact, or LEIS, may be prepared when a major and significant new proposal consists of a report or recommendation of the department on a proposal for legislation initiated by the department that is not within the scope of any categorical exclusion.

(b) *EA, SEE or screening sheet.* An EA is a procedure followed for an action for which the significance of the environmental impact is not clearly established. An EA, SEE or screening sheet may be used as follows:

1. An EA shall be prepared for those project actions for which the significance of the environmental impact is not clearly established. If it is concluded from the analysis in the EA that the action is a major action, an EIS shall be prepared. If it is concluded from the analysis in the EA that the action is not a major action, the EA shall be revised to constitute a FONSI, and the FONSI shall serve as the environmental document. The FONSI shall be prepared only after availability of the EA for public and cooperating and participating agency review and comment and the incorporation of any appropriate revisions resulting from the public involvement process. Where a permit will be required or other agency coordination is specifically required by law, the FONSI may serve as the vehicle for such permit or coordinating agency approval.

2. A SEE may be prepared in the case of proposals contained in system plans, if it is concluded they are major and significant new proposals. If it is concluded from an analysis of the system plan that it does not contain any major and significant new proposals, a clear statement of that determination may be incorporated within the system plan or as a separately identifiable and retained record of the department's determination.

3. In the case of reports or recommendations of the department on proposals for legislation initiated by the department, if it is concluded from the screening sheet they contain major and significant new proposals, an LEIS may be prepared. If it is concluded from the screening sheet that they do not contain any major and significant new proposals or are within the scope of any categorical exclusion, a clear statement of that determination may be included on the screening sheet.

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(c) *ER*. An ER is a procedure followed for an action that is likely to fit the criteria for a conditional categorical exclusion in 23 CFR 771.117(d), 23 CFR 771.118(d), April 1, 1998 or federal aviation administration order 5050.4A, chapter 3, paragraph 23.a., October 8, 1985, 5050.4B, chapter 6, paragraph 605, or otherwise requires coordination with or concurrence of another agency. An environmental report, or ER, shall be prepared to demonstrate whether the proposed action does fit the criteria or conditions for approval as a categorical exclusion and has been properly coordinated with other agencies having jurisdiction by law over specific activities. The ER shall serve as the department's record of coordination with other agencies having jurisdiction over specific activities, including the following activities:

1. Construction-related activities including, but not limited to, stream crossings, fills in wetlands and temporary structures in or over streams or wetlands.
2. Defined land use acquisition including, but not limited to, the acquisition of agricultural lands, historic or archeological sites, and state, county or national forest lands.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92; am. (1), (2) (intro.), (a), (b) and (c) (intro.), Register, February, 1999, No. 518, eff. 3-1-99.

Trans 400.08 Categorization of department actions.

(1) Based on federal regulations and past experience with analysis of similar actions the following are categorized as EIS, EA, ER or CE:

(a) *EIS - Environmental Impact Statement*. The federal highway administration regulations at 23 CFR 771.115(a) April 1, 1998, federal aviation administration order 5050.4A, chapter 3, paragraph 21, October 8, 1985, identify types of federally funded actions which require the preparation of an environmental impact statement.

Note: The National Environmental Policy Act (NEPA) requires the federal government to prepare environmental documentation for major federal actions. The Wisconsin Department of Transportation prepares the federal environmental documentation for review and approval by the federal government of actions for which federal funds are to be used by the Department. The requirements for federally funded actions are followed by the Department when federal funds are involved. These federally funded actions are also actions of the Department to which the Wisconsin Environmental Policy Act (WEPA) applies. Finally, when the Department pursues an action for which only State funds are involved, NEPA does not apply, but WEPA still applies. The intent of this chapter is to direct the Department to follow NEPA and its implementing regulations for both NEPA and WEPA purposes when federal funds are involved in the proposed action. The intent is to apply WEPA and its implementing rules in this chapter when only State funds are involved in the proposed actions, but to make the WEPA

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implementing rules track the federal law and federal regulations as closely as possible.

The following are examples of department major actions that normally require the preparation of an environmental impact statement:

1. Highways and transit.

- a. Construction of a new controlled access freeway.
- b. Construction of a new highway project of 4 or more lanes on a new location.
- c. ~~New construction or extension of fixed rail transit facilities including rapid rail, light rail, commuter rail, and automated guideway transit. Construction or extension of a fixed transit facility (e.g., rapid rail, light rail, commuter rail, bus rapid transit) that will not be located within an existing transportation right-of-way.~~
- d. New construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing highway facility.

2. Airports.

- a. ~~First time airport layout plan approval or airport location approval for a commercial service airport located in a standard metropolitan statistical area. Unconditionally approving or funding the first airport layout plan or airport location for a new commercial service located in a metropolitan statistical area.~~
- b. ~~Federal financial participation in, or airport layout plan approval of, a new runway capable of handling air carrier aircraft at a commercial service airport in a standard metropolitan statistical area. Unconditionally approving or funding a new runway to accommodate air carrier aircraft at a commercial service airport located in a metropolitan statistical area.~~

3. Railroads.

- a. Construction of a new major railroad.
- b. Construction of new major facilities to handle freight, maintenance or passengers.

Note: The federal highway administration regulations at 23 CFR 771.115(a) and federal aviation administration order 5050.4B, chapter 9, section 903, identify types of federally funded actions which normally require the preparation of an environmental impact statement.

The federal railroad administration regulation at 49 CFR 266.19, October 1, 1997, generally identifies actions that do not require an environmental impact statement.

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(b) *EA - Environmental Assessment.* EA procedures apply to actions for which the significance of the environmental impacts is not clearly established and require the preparation of an environmental assessment to make that determination. The federal highway administration regulations at 23 CFR 771.115(e) April 1, 1998, and the federal aviation order 5050.4A, chapter 3, paragraph 22, October 8, 1985 identify the types of federal actions that require the preparation of an environmental assessment. Examples of the department's actions that are required to follow the EA procedure are as follows:

1. Highways and transit. In addition to actions the department determines meet the criteria for an EA action under this chapter, the department may apply EA procedures to the highway and transit actions generally identified in 23 CFR 771.115 (c). Highways and transit actions that are not EIS or CE actions are required to follow EA procedures. This category requires the preparation of an environmental assessment to determine the appropriate environmental document required, unless it appears an ER would be more appropriate.

2. Airports. In addition to actions the department determines meet the criteria for an EA action under this chapter, the department may apply EA procedures to actions generally identified in federal aviation administration order 5050.4B. An airport layout plan approval of the following types of actions shall be subject to the analysis of an environmental assessment and subsequent decision as to whether to prepare an environmental impact statement or a finding of no significant impact:

a. ~~Airport location.~~

b. ~~New runway.~~

c. ~~Major runway extension.~~

d. ~~Runway strengthening which would result in a 1.5 Ldn or greater increase in noise over any noise sensitive area located within the 65 Ldn contour.~~

e. ~~Construction or relocation of entrance or service road connections to public roads which adversely affect the capacity of such public roads.~~

f. ~~Land acquisition associated with any of the items in subs. 2. a. to e. and land acquisition which results in relocation of residential units when there is evidence of insufficient comparable replacement dwellings or major disruption of business activities.~~

g. ~~Establishment or relocation of an instrument landing system, or an approach lighting system.~~

h. ~~An airport development action that affects property of state or local historical, architectural, archeological, or cultural significance; requires land acquisition of over 5~~

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acres from a farm operation; affects wetlands, coastal zones, or floodplains; or affects endangered or threatened species.

3. Administrative facilities. Construction. Examples of department actions regarding administrative facilities to which EA procedures normally apply are: construction of a new or replacement administrative building, including an office building, state patrol academy, driver licensing and testing station, state patrol communications building, or other similar facility, at a new location.

4. Financial assistance. This provision applies to issuance as well as acceptance of the following grants by the department:

- a. Financial grant for railroad construction action that may require an EIS.
- b. Financial grant for construction of new port facilities.
- c. Financial grant for construction of a new disposal facility for harbor dredge material.
- d. Financial grant for dredging of material for the purpose of expanding an existing harbor.
- e. Financial grant for disposal of contaminated harbor dredge material into a new disposal facility.

5. Policy, contract, standard and specification changes. Examples of department actions regarding policy, contract, standard and specification to which EA procedures normally apply are:

- a. Change in policy for nonhighway use of highway right-of-way or non-railroad use of railroad right-of-way by utility companies, or for access to public roads or private residential or commercial driveways or farm crossings.
- b. Change in policy for transport of hazardous cargo, such as explosives, hazardous wastes, toxins, radioactive material, or any other similar cargo.
- c. Change in policy for the maintenance program relating to the use of deicing materials, or to the use of pesticides, herbicides or insecticides within the right-of-way, or to the use of cutback asphalt or creosoted ties, or other similar materials.
- d. Change in policy for acquisition of scenic easements.

6. System planning. Publication or adoption of a system plan. Preparation of a SEE or EA for a system plan is discretionary.

(e) (d) ER - Environmental Report. ER procedures apply to actions identified in 23 CFR 771.117(d), April 1, 1998, and federal aviation administration order 5050.4A, chapter 3,

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paragraph 23a, October 8, 1985. ER actions require documentation with an environmental report. The environmental report shall demonstrate that the action meets the criteria for a categorical exclusion by demonstrating that specific conditions or criteria for the action have been addressed and that significant environmental effects will not result. Examples of ER actions to which ER procedures apply are as follows:

1. Highways and transit. In addition to actions the department determines meet the criteria for an ER action under this chapter, the department may apply ER procedures to the highway and transit actions identified in 23 CFR 771.117 (d) and 771.118 (d).

~~a. Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes, including lanes for parking, weaving, turning or climbing.~~

~~b. Highway safety or traffic operations improvement projects including the installation of ramp metering control devices and lighting.~~

~~c. Bridge rehabilitation, reconstruction or replacement or the construction of grade separation to replace existing at-grade railroad crossings.~~

~~d. Transportation corridor fringe parking facilities.~~

~~e. Construction of new truck weigh stations or rest areas.~~

~~f. Approvals for disposal of excess right of way or for joint or limited use of right of way, where the proposed use does not have significant adverse impacts.~~

~~g. Approvals for changes in access control.~~

~~h. Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and which is located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.~~

~~i. Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.~~

~~j. Construction of bus transfer facilities, including an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements, when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.~~

~~k. Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with~~

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~~existing zoning and where there is no significant noise impact on the surrounding community.~~

~~L. Hardship acquisition of land where the acquisition may not limit or impede the evaluation of future alternatives for planned construction projects, due to the investment in land through hardship acquisition, including evaluation of future shifts in alignment of highways.~~

2. Airports. In addition to actions the department determines meet the criteria for an ER action under this chapter, the department may apply ER procedures to actions identified in the federal aviation administration order 5050.4B.

~~a. Runway, taxiway, apron, or loading ramp construction or repair work including extension, strengthening, reconstruction, resurfacing, marking, grooving, fillets and jet blast facilities, and construction of new heliports on existing airports, except where such action will create environmental impacts off airport property.~~

~~b. Installation or upgrading of airfield lighting systems, including runway end identification lights, visual approach aids, beacons and electrical distribution systems.~~

~~c. Installation of miscellaneous items including segmented circles, wind or landing direction indicators or measuring devices, or fencing.~~

~~d. Construction or expansion of passenger handling facilities.~~

~~e. Construction, relocation or repair of entrance and service roadways.~~

~~f. Grading or removal of obstructions on airport property and erosion control actions with no off airport impacts.~~

~~g. Landscaping generally and landscaping or construction of physical barriers to diminish impact of airport blast and noises.~~

~~h. Projects to carry out noise compatibility programs.~~

~~i. Land acquisition and relocation associated with subs. 2. a. to i.~~

~~j. Removal of a displaced threshold.~~

3. Administrative facilities. Examples of department actions regarding administrative facilities to which ER procedures normally apply are: extensive Extensive remodeling, expansion or modification of an administrative building, including an office building, state patrol academy, driver licensing and testing station, state patrol communications building, or other similar facility, which either substantially increases the capacity of the facility or substantially changes its use.

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4. Financial assistance. This provision applies to issuance as well as acceptance of the following grants by the department.

a. Financial grant for repair or modification of existing port facilities in locations below the ordinary high-water mark that are not within an area designated by a bulkhead line, a lake bed grant, or a submerged lands lease.

b. Financial grant for repair of an approved disposal facility for contaminated dredge material.

c. Financial grant under the transportation economic assistance program for the construction of a local transportation facility.

5. Policy, contract, standard and specification changes. Examples of department actions regarding policy, contract, standard, and specification changes to which ER procedures normally apply are:

a. Change in policy on artificial lighting for highways and airports.

b. Change in policy for planting and landscaping on transportation corridors.

c. Processing a contract change for significant changes in design.

d. Major change in design standards or construction specifications.

(d) (e) CE - Categorical Exclusions. CE actions are categorically excluded from the requirement to prepare environmental documentation pursuant to the rule published by the United States department of transportation in 23 CFR 771.117, April 1, 1998, or its federal aviation administration order 5050.4A, chapter 3, paragraph 23, October 8, 1985. CE actions do not require environmental documentation because, based on past experience with similar actions, they do not involve significant environmental impacts. They are actions which do not induce significant impacts to planned growth or land use for the area, do not require the relocation of significant numbers of people, do not have a significant impact on any natural, cultural, recreational, historic or other resource, do not involve significant air, noise, or water quality impacts, do not have significant impacts on travel patterns, and do not otherwise, either individually or cumulatively, have any significant environmental impacts. Examples of CE actions include the following:

1. Highways and transit. In addition to actions the department determines meet the criteria for a CE action under this chapter, the department may classify as CE actions those highway and transit actions identified in 23 CFR 771.117 (c) and 771.118 (c).

a. Activities which do not involve or lead directly to construction, including planning and technical studies, grants for training and research programs, research activities, approval of a unified work program and any findings required in the planning process, approval of statewide programs, approval of project concepts, engineering to define the

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~~elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed.~~

~~b. Approval of utility installations along or across a transportation facility.~~

~~c. Construction of bicycle and pedestrian lanes, paths, and facilities.~~

~~d. Activities included in the state's "highway safety plan" under 23 U.S.C 402.~~

~~e. Transfer of lands when the subsequent action to be taken on the lands transferred is not a department action.~~

~~f. The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.~~

~~g. Landscaping.~~

~~h. Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no land acquisition or traffic disruption will occur.~~

~~i. Emergency repairs.~~

~~j. Acquisition of scenic easements.~~

~~k. Improvements to existing rest areas and truck weigh stations.~~

2. Airports. In addition to actions the department determines meet the criteria for a CE action under this chapter, the department may classify as CE actions those airport actions identified in federal administration order 5050.4B.

~~a. Acquisition of an existing privately owned airport, as long as acquisition only involves change of ownership.~~

~~b. Acquisition of security equipment required by rule or regulation for the safety or security of personnel and property on the airport, or safety equipment required by rule or regulation for certification of an airport or snow removal equipment.~~

~~c. Issuance of airport planning grants.~~

~~d. Airport improvement program actions which are tentative and conditional and clearly taken as a preliminary action to establish a sponsor's eligibility under the program.~~

~~e. Retirement of the principal of bond or other indebtedness for terminal development.~~

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~~f. Issuance of airport policy and planning documents including the national plan of integrated airport systems, or NPIM, airport improvement program, or AIP, priority system, advisory circulars on planning, design, and development programs which are not intended for direct implementation or which are issued by FAA as administrative and technical guidance to the public.~~

~~g. Issuance of certificates and related actions under the airport certification program.~~

~~h. Issuance of grants for preparation of noise exposure maps and noise compatibility programs pursuant to 49 USC 47501 et seq. and 14 CFR part 150.~~

~~i. Airspace determinations.~~

3. Administrative facilities. Examples of department actions regarding administrative facilities that are normally classified as CE actions are: minor ~~Minor~~ construction or expansion of an airport facility, such as a runway, taxiway, apron, service or entrance road, or passenger handling or parking facility.

4. Financial assistance. This provision applies to issuance as well as acceptance of grants by the department.

a. Financial grant for repair modification of existing facilities in locations below ordinary high water mark that are within an area designated by a bulkhead line, a lake bed grant, or a submerged lands lease.

b. Financial grant for maintenance dredging of navigable waterway.

c. Financial grant for disposal of contaminated dredge material at existing approved disposal facilities.

(2) In addition, the following actions and activities of the department are categorized as CE actions:

(a) Activities exempt by statute or approved as categorical exclusions by the United States council on environmental quality pursuant to 40 CFR 1508.4, July 1, 1998.

(b) Enforcement activities.

(c) Emergency activities to protect public health, safety and the human environment.

(d) Ancillary activities which are part of a routine series of related department actions.

(e) Actions which individually or cumulatively do not significantly affect the quality of the human environment and do not involve unresolved conflicts in the use of available resources.

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- (f) The budget request of the department as a whole submitted to the department of administration and legislature pursuant to ss. s. 16.42 and 19.45 (12), Stats.
- (g) Proposals for enabling or conforming legislation that are required to be enacted to comply with federal law or federal standards as the department is authorized by ss. 20.395 (9) (qx), 84.01 (15), 84.015 and 84.03 (1), Stats., as a matter of federal preemption, but only to the extent so required and no further.
- (h) Reports or recommendation on proposals for legislation for which the department has performed or caused to be performed a SEE as an integral part of system plans.
- (i) Budget requests associated with implementation of a system plan for which a SEE has been completed.
- (j) Reports or recommendations on revenue proposals.
- (k) Expenditure or appropriation requests involving only an existing department program, except requests that constitute major and significant new proposals.
- (L) Reports or recommendations on proposals for legislation that have not been initiated by or sponsored by the department.
- (m) Budgetary proposals submitted in response to a request by the governor, the legislature, legislative committees, or individual legislators.
- (n) Reports or recommendations on proposals for legislation that relate to the level of transportation aids payments to local units of government, including mass transit aids.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92; r. and recr. (1), am. (2) (intro.) and (a), Register, February, 1999, No. 518, eff. 3-1-99.

Trans 400.09 Scoping.

(1) As part of system plan development process, the department may perform SEE scoping. This scoping is to identify the issues to be addressed, alternatives to be analyzed, and the affected public or agencies involved in the system plan development. No scoping is required for reports or recommendations on proposals for legislation, LEIS's, or ER or CE actions.

(2) For actions requiring an EIS or EA procedures, the department shall determine by means of scoping, insofar as possible at the time that a proposed action is approved for planning, development or implementation, the probable action designation, environmental review and agency coordination that will be required. If a decision to prepare an EIS is made, the department shall inform the public and affected agencies by publishing a notice of intent in the Wisconsin administrative register and a local newspaper of general circulation. The notice of intent shall include:

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- (a) A statement that an EIS will be prepared.
 - (b) A brief description of the proposed action.
 - (c) A preliminary list of possible alternatives.
 - (d) A brief discussion of the proposed scoping process.
 - (e) Names and addresses of the contact persons at the federal and state review agencies.
- (3) The scoping process shall include, to the extent feasible, affected local, state and federal agencies, any affected American Indian tribes, and other interested persons. The scoping process may consist of meetings, hearings, workshops, surveys, questionnaires, interagency committees, or other appropriate methods or activities, and may be integrated with other public participation requirements.
- (4) The department shall use the scoping process to accomplish the following:
- (a) Determine the scope of issues to be analyzed in depth in the environmental document.
 - (b) Identify and eliminate from detailed study and further consideration alternatives which are unreasonable and issues which are not significant or which have been covered and documented by prior environmental review related to the proposed action.
 - (c) Establish a schedule for document preparation and for opportunities for public involvement.
 - (d) Determine, when the department is involved in the development of proposals with other state agencies, which agencies may be joint lead agencies or whether one agency should be designated the lead agency.
 - (e) Ensure the required involvement of any cooperating and participating agencies.
 - (f) Determine whether tiering shall be used to improve or simplify the environmental processing of complex actions.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92; am. (1) and (2) (intro.), Register, February, 1999, No. 518, eff. 3-1-99.

Trans 400.10 Preparation and content of environmental documents.

- (1) PREPARATION. The environmental documents shall be prepared by one of the following:

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(a) The department.

(b) Local units of government under the direction of the department and with final review and approval responsibility by the department.

(c) A consultant under the direction of the department and with final review and approval responsibility by the department.

(2) SEE CONTENT. While the general issues to be addressed by a SEE are similar to those in the individual project evaluations, it is recognized that, in most cases the analysis of transportation alternatives, including multi-modal analyses where appropriate, will be qualitative, reflecting the broad level of generality of system plans. Therefore, by necessity, a SEE shall be more conceptual, qualitative, and general than is common with the individual project environmental reviews. A SEE, prepared as an integral part of a system plan, may address the following matters:

(a) The range of environmental effects, including the effects on sensitive land and water resources, of system plans.

(b) In non-attainment areas, the range of air quality impacts which might be expected from system plan recommendations.

(c) The range of system plan effects on energy consumption.

(d) The relation of system plans to adopted regional development goals and plans, including potential effects of transportation on land use and land use on transportation demand.

(e) The range of anticipated effects of system plans on traffic congestion.

(f) The range of anticipated effects of system plans on economic development.

(g) The qualitative comparison of the costs of system plans and expected benefits.

(h) The range of effects of system plans on communities.

(3) DEIS AND FEIS CONTENT.

(a) The DEIS and FEIS shall be consistent with applicable laws, orders and policies, and shall include all of the following:

1. A summary which describes the proposed action and discusses the major environmental issues and controversies associated with the proposal.

2. A statement of purpose and need for the proposed action.

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3. A discussion of the proposed action. The discussion shall:
 - a. Evaluate alternatives.
 - b. Specify the reasons for eliminating any of the alternatives from further consideration.
 - c. Address each reasonable alternative being considered in detail, so that their relative merits and liabilities can be compared.
4. A brief description of the human environment of the area or areas that may be affected by each of the alternatives under consideration. The amount of detail of such description shall be commensurate with the significance of the potential environmental impacts, but shall at a minimum identify and describe:
 - a. The existing quality of the human environment, including the economy, land use, demographics and projections of the population, traffic, natural and physical characteristics and their use, energy consumption, historic and archeological sites, and recreational facilities.
 - b. The required agency coordination, public involvement and permits or authorizations.
 - c. The relationship of the proposed action to adopted or proposed land use plans, policies, controls, and goals and objectives of affected communities, including potential effects of transportation on land use and land use on transportation demand.
5. A discussion of the environmental consequences. The discussion shall include the following:
 - a. The environmental impacts of the alternatives.
 - b. The adverse environmental effects, if any, which cannot be avoided should the proposed action be implemented.
 - c. The relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity.
 - d. The significant irreversible or irretrievable commitments of resources, if any, which would be involved should the proposed action be implemented.
 - e. The beneficial aspects of the proposed action, both short and long term.
 - f. The economic advantages and disadvantages of the proposed action.
6. A discussion of the measures being considered to minimize the harm or enhance the beneficial environmental effects of the proposed action. The discussion may include

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alternative designs or construction methods, alternative management actions, or other alternatives such as replacement, restoration or compensation.

7. The names and qualifications of the persons primarily responsible for preparing the document or significant supporting background papers, including basic components of the DEIS and FEIS.

(b) In addition to the contents required under par. (a), the DEIS shall also include the identification of the preferred alternative, if any.

(c) In addition to the contents required under par. (a), the FEIS shall also incorporate the comments received during the DEIS and subsequent hearing processes. A response shall be made to each substantive environmental issue identified in the comments and not addressed in the DEIS. The response shall include a discussion of the environmental issue, including the identification of the efforts to resolve the issue and the commitments to specific measures to mitigate adverse impacts and enhance beneficial effects.

(4) EA AND FONSI CONTENT.

(a) The EA and FONSI may be completed on screening sheets developed by the department, and shall include all of the following:

1g. The content requirements for an ER under sub. (5).

- ~~1.~~ 1r. Stimulation of secondary indirect environmental effects.
2. Creation of a new environmental effect.
3. Impacts on geographically scarce resources.
4. Precedent-setting nature of the proposed action.
5. The degree of controversy on environmental grounds associated with the proposed action.
6. Conflicts with official agency plans or local, state, or national policies, including conflicts resulting from potential effects of transportation on land use and land use on transportation demand.
7. Cumulative environmental impacts of repeated actions of the type proposed.
8. Foreclosure of future options.
9. Direct or indirect impacts on ethnic or cultural groups.

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(b) In addition to the contents required under par. (a), the FONSI shall also include the following:

1. A specific finding that the proposed action is not a major action.
2. Documentation showing permit or coordinating agency approval when the FONSI serves as the vehicle for such approval.

(5) ER CONTENT. The ER may be completed on screening sheets developed by the department. The ER shall reflect compliance with the applicable laws and regulations of other agencies, and shall include all of the following:

- (a) A description of the proposed action.
- (b) The purpose and need of the proposed action.
- (c) A brief description of the preferred alternative and the other alternatives under consideration.
- (d) The reasons for eliminating any of the alternatives from further consideration.
- (e) A summary of the status and results of agency coordination and public involvement.
- (f) A brief summarization of environmental, social and economic issues relevant to the proposed action including the use of prescribed construction-related methods or special contract provisions or land acquisitions that would be used to ensure that no significant adverse environmental effects or controversies developed.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92; am. (2) (intro.), Register, February, 1999, No. 518, eff. 3-1-99.

Trans 400.11 Distribution and review of environmental documents.

(1) SEE.

(a) *Public availability of SEE.* When required, a SEE shall be prepared as an integral element of system plans. The system plan and SEE shall be made available for public inspection at the department's central office, appropriate department region offices, and depository libraries.

(b) *Notice of availability of a SEE.* A notice of availability of a system plan and its SEE shall be published as provided in sub. (8). ~~in the official state newspaper and other newspapers, as deemed appropriate. The notice may be combined with a notice of opportunity for a public hearing on the system plan. The notice shall:~~

- ~~1. Briefly describe the plan.~~

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- ~~2. List the locations where the plan and its SEE may be reviewed.~~
- ~~3. Invite the public to furnish comments on the plan and the SEE.~~
- ~~4. Indicate where comments are to be sent and their due date.~~

(c) *Public hearing.* A public hearing on a system plan and its SEE shall be held by the department, except there is no requirement for a two-step, draft and final SEE because the planning process contemplates that if the plan recommendations are implemented, there will be subsequent project or site-specific environmental reviews.

(2) LEIS. In the case of a departmental report or recommendation on a department-initiated proposal for legislation that contains major and significant new proposals that are not within the scope of any categorical exclusion, the department shall prepare a LEIS substantially following the guidelines of the United States council on environmental quality in 40 CFR 1506.8, July 1, 1998. This includes transmission of the LEIS to the legislature concurrent with or within 30 days after the legislative proposal is submitted to the legislature, provided that the LEIS must be available in time for legislative hearings and deliberations, and 5 days in advance. There is no scoping requirement and the statement shall be prepared in the same manner as a DEIS, but shall be considered the detailed statement required by s. 1.11 (2) (c), Stats. Any comments on the LEIS shall be given to the department which shall forward them along with its own responses to the legislative committees with jurisdiction.

(3) DEIS.

(a) *Printing and distribution of DEIS.* Printing of the DEIS shall be the responsibility of the preparer. Sufficient quantities of the DEIS shall be printed to meet distribution requirements. The DEIS shall be distributed to the following:

1. The office of the governor.
2. Local, state and federal governmental agencies having special expertise, interest or jurisdiction.
3. Regional and county planning agencies within the area of the proposed action.
4. Public officials, interest groups and members of the public having the potential to be directly affected by the proposed action and requesting a copy of the DEIS. A charge may be assessed to cover reproduction and handling costs.
5. Offices of the department located in the vicinity of the proposed action and at the department's central office.
6. Public libraries:

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a. For proposals having local importance, the nearest public library. In addition, a request shall be made to an appropriate public official to make the document available in a public place.

b. For proposals having regional importance, public libraries with a geographic distribution which provides public access without undue travel.

c. For proposals having statewide interest, public libraries providing reasonable access for members of the public who would be potentially affected by such proposals.

~~(b) *Notice of availability of DEIS.* A notice of availability of the DEIS shall be published as provided in sub. (8), in the appropriate official local newspaper or in a newspaper with general circulation within the area affected by the proposed action. If the proposed action is of statewide interest, such notice shall also be published in the official state newspaper. Such notice shall include:~~

- ~~1. A brief description of the proposed action.~~
- ~~2. A brief description of the administrative procedures to be followed.~~
- ~~3. The date by which comments on the DEIS must be submitted to the department.~~
- ~~4. The locations where copies of the DEIS are available for review.~~

~~(4) FEIS. The FEIS and ROD shall be printed and distributed, and a notice of availability of the FEIS shall be published in the same manner as provided for a DEIS under sub. (3), except that . If separate FEIS and ROD documents are necessary under s. Trans 400.13 (1) (am), the decision to proceed with the proposed action and to sign the ROD shall not be made sooner than 30 days after the date of publication of the notice of availability of the FEIS or 90 days after the date of publication of the notice of availability of the DEIS.~~

~~(5) EA.~~

~~(a) *Public availability of EA.* The EA shall be made available for public inspection at the department's central office, the appropriate department region office, public libraries as identified under s. Trans 400.11 (3) (a) 6., and the office of the local unit of government having requested the proposed action. A charge may be assessed to cover reproduction and handling costs for requested copies of the EA or portions thereof.~~

~~(b) *Notice of availability of EA.* A notice of availability of the EA shall be published as provided in sub. (8), in the appropriate official local newspaper or in a newspaper of general circulation within the area affected by the proposed action. If the proposed action is of statewide interest, the notice shall also be published in the official state newspaper. The notice may be combined with the notice of opportunity for public hearing provided for under par. (c). The notice shall:~~

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- ~~1. Briefly describe the proposed action.~~
- ~~2. Announce the completion and availability of the EA.~~
- ~~3. List the locations where the EA may be inspected.~~
- ~~4. Invite the public to furnish written comments on the proposed action.~~
- ~~5. Indicate where comments are to be sent and that such comments must be submitted within 30 days of the publication date of the notice.~~

(c) Notice of opportunity for to request a public hearing on EA. If the department determines to afford the opportunity for a public hearing on an EA under s. Trans 400.11(4) (a), a A notice of opportunity for to request a public hearing shall be published when the EA is completed and made available for inspection as provided for under par.

(a). Publication of the notice shall be in the appropriate official local newspaper or in a newspaper of general circulation within the area affected by the proposed action. Publication shall also be in the official state newspaper if the proposed action is of statewide interest. The notice shall invite submission of requests for a public hearing on the EA within 30 days after the date of publication of the notice. The notice shall include a description of the procedure for requesting a public hearing.

(6) FONSI. The FONSI shall be made available by the department to participating local units of government and to the public upon request. A notice of availability shall not be required for a FONSI. A charge may be assessed to cover reproduction and handling costs for requested copies of the FONSI or portions thereof.

(7) ER. ~~The ER shall upon request be made available for inspection at the department's central office, the appropriate department region office, and the office of the local unit of government having requested the proposed action. A notice of availability shall not be required for an ER. A charge may be assessed to cover reproduction and handling costs for requested copies of the ER.~~

(a) The ER shall upon request be made available for inspection at the department's central office, the appropriate department region office, and the office of the local unit of government having requested the proposed action. Subject to par. (b), a notice of availability shall not be required for an ER. A charge may be assessed to cover reproduction and handling costs for requested copies of the ER.

(b) If the department determines to hold or afford the opportunity for a public hearing on an ER action under s. Trans 400.12 (4) (b), the department shall make the ER publically available and provide notice of public availability under sub. (5) as if the ER were an EA.

(8) NOTICE OF AVAILABILITY.

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(a) When an environmental document listed under par. (b) is made available to the public by the department, a notice of availability shall be published in the appropriate official local newspaper or in a newspaper of general circulation within the area affected by the proposed action. If the proposed action is of statewide interest, the notice shall also be published in the official state newspaper. The notice shall:

1. Briefly describe the proposed action.
2. Announce the completion and availability of the environmental document.
3. List the locations where the environmental document may be inspected.
4. Except in the case of a ROD or a combined FEIS and ROD document, invite the public to furnish written comments on the proposed action; indicate where comments are to be sent; and the date that such comments must be submitted to the department. The comment period may not be less than, nor without cause longer than, 45 days after the publication of the notice of availability.

(b) A notice of availability shall be published for the following environmental documents:

1. SEE.
2. DEIS.
3. FEIS and ROD, or a combined FEIS and ROD.
4. EA.
5. ER, if the department determines that it will hold or afford the opportunity for a public hearing under s. Trans 400.12 (4) (b).

(c) The notice of availability of the environmental document may be combined with other public notices required under this chapter.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92; corrections in (1) (a), (5) (a), (7) made under s. 13.92 (4) (b) 6., Stats., Register February 2013 No. 686.

Trans 400.12 Public hearings.

(1) PUBLIC HEARING ON SEE. The department shall hold a public hearing on a system plan and its SEE no sooner than 15 days after its notice of public hearing. The public hearing shall be held after announcement of the public hearing and the identity of the system plan and its SEE shall be referenced in the public hearing announcement.

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(2) NO PUBLIC HEARING ON LEIS. As provided in s. 1.11 (2) (d), Stats., no public hearing is required on environmental impact statements on reports or recommendations on proposals for legislation.

(3) PUBLIC HEARING ON DEIS.

(a) Whenever a proposed action requires an EIS, the department shall hold a public hearing on the DEIS no sooner than 15 days after its notice of availability is published. The hearing shall be held prior to the determination of the recommended selection of the final course of action for the proposal, but the department may present a preferred alternative.

(b) A notice of public hearing shall be published, at least 15 days prior to the hearing, in the appropriate official local newspaper or in a newspaper of general circulation within the area affected by the proposed action. If the proposed action is of statewide interest, such notice shall also be published in the official state newspaper and any other newspapers as appropriate to obtain comprehensive coverage. Copies of the notice shall be mailed to appropriate local, state and federal agencies and to others having an interest in the proceedings of the proposed action. The notice of public hearing shall include:

1. Identification of the DEIS.
2. Date, time and place of the hearing.
3. A brief description of the proposed action.
4. A brief description of the scope and purpose of the hearing.
5. The address to which questions may be sent prior to the hearing and locations where additional information may be obtained.
6. Provision for submitting written statements in place of, or in addition to, testimony presented at the public hearing.
7. The locations where the DEIS may be obtained or reviewed.

(c) The public hearing may be combined with other hearings and notices of hearings required for departmental actions, provided the requirements under pars. (a) and (b) are met.

(4) PUBLIC HEARING OR OPPORTUNITY FOR PUBLIC HEARING ON EA OR ER.

(a) EA. Unless EA procedures indicate the action is an EIS action, the department shall hold or afford the opportunity for a public hearing on an EA action prior to the issuance of a FONSI. A public hearing on an EA may be held by the department at the department's discretion and shall be held if a request for such a hearing is received by the

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department within the time specified in the notice of opportunity for a public hearing provided for under s. Trans 400.11 (5) (c).

(b) *ER*. The department at its sole discretion may determine to hold a public hearing or afford the opportunity for a public hearing for ER actions. If the department determines to afford the opportunity for a public hearing for an ER action, the department shall publish a notice of opportunity to request a public hearing under s. Trans 400.11 (5) (c).

(c) Whenever the department determines to hold a public hearing or approves a timely request for a public hearing under this subsection, the department shall proceed in the same manner as provided for a public hearing on a DEIS under sub. (3), except that the public hearing shall be held no sooner than 15 days after publication of the public hearing notice and the identity of the EA or ER shall be referenced in the public hearing notice.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92.

Trans 400.13 Decision on proposed action.

(1) FEIS; RECORD OF DECISION.

~~(a) The department shall complete and sign a record of decision no sooner than 30 days after the date of publication of the notice of availability of the FEIS provided for under s. Trans 400.11 (4).~~

(am) Combined FEIS and ROD. To the maximum extent practicable, the department shall expeditiously develop a single document that consists of an FEIS and ROD, unless:

1. The FEIS makes substantial changes to the proposed action that are relevant to environmental or safety concerns; or
2. There are significant new circumstances or information relevant to environmental concerns and that bear on the proposed action or the impacts of the proposed action.

(b) The record of decision, whether issued in combination with an FEIS or separately, shall contain the following information:

1. A statement of the decision.
2. Identification of all alternatives considered by the department in reaching its decision, specifying which one is considered environmentally preferable.
3. A statement indicating that all practicable means to avoid or mitigate environmental harm have been adopted, and if not so adopted, a statement specifying the reasons for not adopting all such means.

(2) EA; FINDING OF NO SIGNIFICANT IMPACT.

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(a) The decision to revise an EA to constitute a FONSI shall not be made until after the end of the 30-day period specified in the notice of availability of the EA provided for under s. Trans 400.11 (5) (b).

(b) If potentially significant impacts have not been identified, the department shall revise the EA as appropriate and shall attach a summary of the public hearing, if a hearing was held, and a summary of any comments received and responses thereto. These items, along with a statement of no significant impact, shall constitute the FONSI and the record of decision.

(c) If, at any point in the EA process, the department determines that the proposed action may have a significant impact on the quality of the human environment, an EIS shall be prepared.

(3) ER.

(a) Unless the department determines to hold or afford the opportunity for a public hearing under s. Trans 400.12 (4) (b), an approved ER document constitutes the department's final decision on a proposed action.

(b) When the department holds or affords the opportunity for a public hearing on an ER, the decision to revise an ER to constitute a final decision on a proposed action shall not be made until after the end of the 30-day period specified in the notice of availability of the ER provided for under s. Trans 400.11 (5) (b).

(b) If potentially significant impacts have not been identified during the ER availability period, the department shall revise the ER as appropriate and shall attach a summary of the public hearing, if a hearing was held, and a summary of any comments received and responses thereto. These items, along with a statement of no significant impact, shall constitute the final action determination document and the record of decision.

(c) If, at any point in the ER process, the department determines that the proposed action may have a significant impact on the quality of the human environment, an EIS shall be prepared before proceeding with the proposed action.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92.

Trans 400.14 DEIS and FEIS reevaluation and supplement.

(1) DEIS.

(a) A reevaluation of a DEIS shall be prepared if 3 years have elapsed before the date of publication of the notice of availability of the FEIS provided for under s. Trans 400.11 (4). A reevaluation of a DEIS shall also be prepared any time prior to the date of publication of the notice of availability of the FEIS if, in the judgment of the department,

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there have been significant changes in the proposed action, the affected human environment, the anticipated environmental impacts or the proposed mitigation measures. If in either case the reevaluation indicates or confirms any such significant changes, a new environmental document or supplemental DEIS shall be prepared prior to proceeding with the proposed action. The supplemental DEIS shall be prepared and processed in the same manner as a DEIS under this chapter. Preparation of the supplemental DEIS shall not require withdrawal of previous approvals for those aspects of the proposed action not directly affected by the changed condition or new information.

(b) An EA may be used to assess the need to prepare a supplemental DEIS if it is uncertain that significant changes in the proposed action, the affected human environment, the anticipated environmental impacts or proposed mitigation measures will result in significant environmental impacts which could not be identified from preparing a reevaluation of the DEIS. The EA shall be prepared and processed in accordance with the requirements of this chapter. Preparation of the EA shall not require withdrawal of previous approvals for those aspects of the proposed action not directly affected by the changed condition or new information.

(2) FEIS.

(a) A reevaluation of a FEIS shall be prepared any time there have been, in the judgment of the department, significant changes in the proposed action, the affected human environment, the anticipated environmental impacts or the proposed mitigation measures. If the reevaluation confirms any such significant changes, a new environmental document or a supplemental FEIS shall be prepared prior to proceeding with the proposed action. The supplemental FEIS shall be prepared and processed in the same manner as a FEIS under this chapter. Preparation of the supplemental FEIS shall not require withdrawal of previous approvals for those aspects of the proposed action not directly affected by the changed condition or new information.

(b) An EA may be used to assess the need to prepare a supplemental FEIS if it is uncertain that significant changes in the proposed action, the affected human environment, the anticipated environmental impacts or proposed mitigation measures will result in significant environmental impacts which could not be identified from preparing a reevaluation of the FEIS. The EA shall be prepared and processed in accordance with the requirements of this chapter. Preparation of the EA shall not require withdrawal of previous approvals for those aspects of the proposed action not directly affected by the changed condition or new information.

(3) REVISION OF FINAL ACTION DOCUMENT. The department may revise a final action document, including a ROD, FONSI or ER, in order to select a different alternative, provided that the new selected alternative is fully evaluated in the FEIS, EA or ER to the same degree as the originally selected alternative; or in order to make substantial changes to mitigation measures or findings discussed in the final agency action. Those agencies which reviewed the FEIS, EA or ER shall be given an opportunity to review and comment on the revised final action document. To the extent practicable, the approved

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revised final action document shall be provided to all persons, organizations, and agencies that received the FEIS, EA or ER.

History: Cr. Register, April, 1992, No. 436, eff. 5-1-92.

[[APPENDIX 1]]

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TRANS 510
**"Transportation Facilities Economic Assistance and Development
(TEA) Program"**

Proposed Changes:

- 1) **Recommendation:** Consolidate Trans 510.08 (2) (intro.), (a) and (b) and amend to read:

Trans 510.08(2) A jobs guarantee with the local governing body shall be part of the project agreement when deemed necessary by the department in order to protect the public interest. The local governing body shall, in turn, be encouraged to develop a similar agreement with the economic development project. The jobs guarantee shall obligate the local governing body to reimburse the department for up to the full amount of the grant if either of the following occurs: ~~(a) The guaranteed number of direct jobs associated with the economic development project do not result within 3 years of the date the project agreement is executed (b) The the guaranteed number of direct jobs associated with the economic development project do not exist 7~~ five years after the date the project agreement is executed. The base number of jobs to be used for comparison shall be established on the date funds are awarded. Verification of the number of direct jobs associated with the economic development project shall be made utilizing information available from the department of workforce development and other sources.

RATIONALE: Under the TEA program, the sponsoring local unit of government must repay the grant if the guaranteed number of direct jobs associated with the economic development project does not result within 3 years of the date the project agreement is executed, or if the guaranteed number of direct jobs does not exist 7 years after the project agreement is executed. Changing the total job commitment from 7 years to 5 years, and deleting the requirement that the guaranteed number of direct jobs be created within 3 years after project agreement execution, is more analogous to neighboring states with similar programs.